apparently
not reported up to
151 US

145 US 660

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

October Term, 1891.

No. 142.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

HORACE M. RUGGLES, IMPLEADED WITH ROBERT C. MORGAN, ALBERT R. BASS, AND CHARLES E. WHITEHEAD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1888.

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1 UNITED STATES OF AMERICA, *ss:*

The president of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiff, and Robert C. Morgan, Albert R. Bass, Charles E. Whitehead, and Horace M. Ruggles, defendants, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears; we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-eight, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Samuel F. Miller, senior associate justice of the said Supreme Court, the tenth day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN A. SHIELDS,
Clerk.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
Circuit Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from three to one hundred and seventy-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of the United States of America, plaintiff in error, against Robert C. Morgan, Albert R. Bass, Charles E. Whitehead, and Horace M. Ruggles, defendants in error, as the same remain of record on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

[SEAL.] JOHN A. SHIELDS,
Clerk.

(Indorsed:) U. S. Supreme Court. The United States of Amerca, pl'ff in error, vs. Horace M. Ruggles, impleaded with Robert C. Morgan et al., def't in errror. Original writ of error. Service of a copy of the within writ of error is hereby admitted this 11 Sept., 1888. Starr & Ruggles, att'ys for def't in error.

[Stamp:] U. S. circuit court. Filed Sep. 11, 1888. John A. Shields, clerk.

3 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judge of the district court of the United States, for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America, plaintiff, and Robert C. Morgan, Albert R. Bass, Charles E. Whitehead, and Horace M. Ruggles, defendants, a manifect error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you may have the same, at the city of New York, on the first Monday of April, eighteen hundred and eighty-seven, in the said circuit court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 22d day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

[L. S.] TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

ADDISON BROWN.

4 United States district court for the southern district of New York.

THE UNITED STATES OF AMERICA *against* ROBERT C. MORGAN, ALBERT R. Bass, Charles E. Whitehead, and Horace M. Ruggles.	Suit on bond.

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the United States attorney for said district within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York, at the city of New York, this 8th day of December, in the year one thousand eight hundred and eighty four.

[SEAL.] SAM'L H. LYMAN,
Clerk.

ELIHU ROOT,
United States Attorney.
(Office and post-office address, U. S. Court and Post
Office Building, Broadway and Park Row, New York.)

5 United States district court, southern district of New York.

THE UNITED STATES
against
ROBERT C. MORGAN, ALBERT R. BASS, AND
Charles Whitehead.
} Complaint.

The above plaintiff, by Elihu Root, its attorney for above said district, complaining of the above-named defendants, alleges:

That on or about the twelfth day of May, in the year eighteen hundred and seventy-five, by a certain writing obligatory, bearing date the day and year last aforesaid, sealed with their seals, and now here shown to this court, a copy of which is hereto annexed and made part of this complaint, the defendants acknowledged themselves to be jointly and severally held and firmly bound unto the plaintiff in the sum of twenty thousand dollars, for the payment whereof the defendants bound themselves, their heirs, executors, and administrators, in the whole and for the whole, severally, firmly by said bond.

That the said writing obligatory was then and there and yet remains subject to a certain condition thereunder written whereby it was provided that, whereas the above defendant Robert C. Morgan has been appointed by the Secretary of State of the United States disbursing clerk of the Department of State, in accordance with the provisions of Chapter 129, U. S. Statutes at Large, vol. 18, entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for
the year ending June 30th, 1876, and for other purposes, approved
6 March 3d, 1875, to faithfully discharge the duties of such disbursing clerk according to law, therefore, if the said defendant R. C. Morgan should faithfully discharge the duties of such disbursing clerk, then the said obligation to be void, otherwise to remain in full force and virtue.

The plaintiff for assigning a breach of said writing obligatory, avers that, after the making of said bond and writing obligatory, and on the final accounting of the Auditor of the Treasury Department of the United States, the defendant failed to faithfully discharge the duties of such disbursing clerk as aforesaid according to law, in this, that as such disbursing clerk as aforesaid he had in his possession moneys of the plaintiff, namely, $16,860.67, which said sum he then and there failed to account for or to pay over or deliver up to this plaintiff, although duly requested so to do; but so to do has wholly refused and neglected, but then and there converted said sum to his own use.

That by means of the said several premises hereinbefore set forth, the said writing obligatory hereinbefore mentioned became and remained forfeited, and the plaintiff has sustained damages to the amount of sixteen thousand eight hundred and sixty dollars and sixty-seven cents, with interest thereon from the 24th day of January, 1884.

Wherefore plaintiff demands judgment against the defendants for the sum of $16,860.67, with interest from the 24th day of January, 1884, besides the costs of this action.

ELIHU ROOT,
U. S. Attorney.

STATE OF NEW YORK,
City and County of New York, ss:

7 George E. P. Howard, being duly sworn, deposes and says: That he is an assistant United States attorney; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters alleged on information and belief, and as to those matters he believes it to be true.

G. E. P. HOWARD.

Sworn to before me this 25th day of February, 1885.

BENJAMIN BARKER, JR.,
Notary Public, N. Y. Co.

Know all men by these presents,

That we, Robert C. Morgan, of the city of Yonkers, county of Westchester, and State of New York, as principal, and Albert R. Bass, of 513 Vanderbilt avenue, Brooklyn, N. Y.; Chas. E. Whitehead, of 61 Wall street, N. Y.; Horace M. Ruggles, of 110 Lexington avenue, N. Y., as sureties, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars ($20,000) lawful money, to be paid to the said United States, for which payment well and truly to be made we jointly and severally bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents.

Signed with our hands and sealed with our seals, and dated this twelfth day of May, in the year of our Lord one thousand eight hundred and seventy-five.

8 The condition of this obligation is such that, whereas the said Robert C. Morgan, chief of the Bureau of Accounts of the Department of State, has been appointed by the Secretary of State, in accordance with the provisions of an "Act making appropriations for 'the legislative, executive, and judicial' expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes," approved March 3d, 1875, disbursing clerk of the Department of State (to make disbursements and perform other duties, and give bond as required by law,

Now, therefore, if the said Robert C. Morgan shall faithfully discharge the duties of such disbursing clerk according to law, then this obligation to be void, otherwise to be and remain in full force and virtue.

R. C MORGAN. [L. S.]
ALBERT R. BASS. [L. S.]

Witness to R. C. Morgan and A. R. Bass,
ROBT. PRINCE.

CHAS. E. WHITEHEAD. [L. S.]

Witness to C. E. Whitehead,
HALIBURTON PALES.

H. M. RUGGLES. [L. S.]

Witness as to H. M. Ruggles,
GEORGE W. BROWNE.

OFFICE U. S. ATTORNEY, SOUTHERN DISTRICT N. Y.,
New York, May 12th, 1875.

I, George Bliss, U. S. attorney for the southern district of New York, certify that Albert R. Bass, Charles E. Whitehead, and Horace M. Ruggles, the sureties to the foregoing bond, are residents—the said Bass of Brooklyn and the said Whitehead and Ruggles of New York City, respectively; are citizens of the United States, and good and sufficient sureties for the penalty of said bond.

(Signed) GEORGE BLISS,
U. S. Atty.

9 United States district court, southern district of New York.

THE UNITED STATES
against
ROBERT C. MORGAN, ALBERT R. BASS, AND Charles Whitehead.
} Answer.

The answer of Horace M. Ruggles to the complaint of the plaintiff in the above action:

First. He admits that the said writing obligatory was sealed as alleged in the complaint, and was of the tenor and effect therein set forth.

Second. He denies that said Robert C. Morgan was ever appointed disbursing clerk of the Department of State, as therein alleged.

Third. He denies that the said writing obligatory was made pursuant to and in accordance with the provisions of the laws of the United States relating to the appointment of disbursing clerks in the Department of State and the other Executive Departments.

Fourth. He alleges that in order to procure the signature of said writing obligatory, said Morgan stated and represented that he would procure the same to be signed by Wm. Maxwell Wood and one other good and responsible surety in addition to said Albert R. Bass and Charles E. Whitehead, and relying upon such statement and representation the same was signed and entrusted to said Morgan to procure such additional signatures; and if the same was ever delivered or made use of by him such delivery was without authority and fraudulent, and the said writing obligatory is void and of no effect.

10 Fifth. He denies that said Morgan committed the breach of said alleged writing obligatory as set forth in the complaint or

failed to faithfully discharge the duties of disbursing clerk according to law.

Sixth. He alleges that said Morgan did pay and disburse all moneys received by him from the United States as disbursing clerk, and that if he failed at any time to account for moneys said to have come into his possession, such moneys were not received by him from the United States to be paid and disbursed by him, said Morgan, in the performance of his duty as disbursing clerk, and that all moneys which it was the duty of the disbursing clerk of the Department of State to pay out and make disbursement of were moneys to be drawn by him from the Treasury of the United States, pursuant to the laws of the United States respecting the payment and disbursement of moneys by the disbursing clerk aforesaid; and he avers that all moneys so drawn and received from the Treasury were paid and disbursed as required by law.

STARR & RUGGLES,
Atty's for H. M. Ruggles, above named.

STATE OF NEW YORK,
City and County of New York, ss:

Horace M. Ruggles, above named, being duly sworn, says the foregoing answer is true of his own knowledge, except as to those matters alleged on information and belief, and as to those matters he believes it to be true.

H. M. RUGGLES.

Sworn to before me May 15th, 1885.

EDWIN C. MOTT,
Notary Public, N. Y. City and County.

11 The defendant Ruggles, by his attorneys, having this day (June 15th, 1885) served an amended pleading by which the defects pointed out in this notice of motion have been cured, no further proceedings were taken under said notice of motion.

United States district court, southern district of New York.

THE UNITED STATES
against
ROBERT C. MORGAN, ALBERT R. BASS, AND Charles Whitehead.
} Notice of motion.

GENTLEMEN: Please take notice that upon the complaint and answer in the above-stated cause, I shall move the court at a stated term thereof, to be held at the court rooms thereof in the United States post-office and court-house building, on Tuesday, the 16th day of June, 1885, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order striking out the fourth, fifth, and sixth paragraphs of the answer herein of defendant Ruggles, on the ground that said paragraphs are irrelevant, redundant, hypothetical, and insufficient in law; and for such other and further relief as to the court may seem just and proper in the premises.

Dated New York, June 8th, A. D. 1885.

Yours, &c.,

ELIHU ROOT,
U. S. Attorney.

To Messrs. STARR & RUGGLES,
Attorneys for defendant H. M. Ruggles, No. 120 Broadway.

12 United States district court, southern district of New York.

THE UNITED STATES
vs.
ROBERT C. MORGAN, ALBERT R. BASS, AND Charles Whitehead. } Amended answer.

The amended answer of Horace M. Ruggles to the complaint of the plaintiff in the above-entitled action:

First. He admits that said writing obligatory was sealed as alleged in the complaint and was of the tenor and effect therein set forth.

Second. He denies that said Robert C. Morgan was ever appointed disbursing clerk of the Department of State, as therein alleged.

Third. He denies that the said writing obligatory was made pursuant to and in accordance with the provisions of the laws of the United States relating to the appointment of disbursing clerks in the Department of State and the other Executive Departments.

Fourth. He denies that said Morgan in any respect failed to faithfully discharge the duties of disbursing clerk according to law, or that 13 as disbursing clerk he had in his possession moneys of the plaintiff, namely, $16,860.67, or any other sum, which he failed to account for or to pay over, or that he converted said sum, or any sum, to his own use, as alleged in said complaint.

STARR & RUGGLES,
Attorneys for H. M. Ruggles.

STATE OF NEW YORK, *City and County of New York, ss:*

Horace M. Ruggles, above named, being duly sworn, says that the foregoing answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

H. M. RUGGLES.

Sworn to before me June 12th, 1885.

B. MOYNAHAN,
Notary Public N. Y. Co.

14 District court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF,
against
ROBERT C. MORGAN, ALBERT R. BASS, CHARLES Whitehead, and Horace M. Ruggles, defendants. }

Bill of exceptions.

Afterwards, at the June term of the said court, in the year 1886, to wit, on the 16th day of June, A. D. 1886, before the said court came the said plaintiff by its attorney, and the defendant, Horace M. Ruggles, by his attorney, and a jury being then and there duly chosen and sworn to try the issues aforesaid, on which day the jury did, by direction of the court, render their verdict for the defendant and against the plaintiff.

The fact of the appointment of Robert C. Morgan as disbursing clerk of the Department of State being formally admitted by the defendant, the plaintiff to sustain the issues on its part introduced in evidence two certain transcripts from the books and proceedings of the Treasury Department of the United States of the accounts of Robert C. Morgan as disbursing clerk of the Department of State, certified by the Register and authenticated under the seal of the Department. The transcripts were marked Plaintiff's Exhibits Nos. 1 and 2 respectively.

The defendants' counsel objected to the transcripts as incomplete and defective; objection overruled and the transcripts admitted, to which ruling and admission defendants' counsel excepted.

15 U. S. district court, S. D. N. Y.

PLAINTIFF'S EXHIBIT 1.

[JAMES H. FISH, Stenographer.—Office of the Register of theTreasury.—Form 1*a*.]

Transcript certificate.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
Washington, D. C., July 28th, 1884.

Pursuant to section 886 of the Revised Statutes of the United States, I, B. K. Bruce, Register of the Treasury Department, do hereby certify that the annexed is a transcript from the books and proceedings of the Treasury Department, and true copies of the originals on file in the case of Robert C. Morgan, deceased, late Disbursing Clerk of the Department of State.

B. K. BRUCE,
Register,
C. T. N.

M. H.

Be it remembered, that B. K. Bruce, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Chas. E. Coon, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this 28th day of July, in the year of our Lord 1884.

[SEAL.]
CHAS. E. COON,
Acting Secretary of the Treasury.

16 No. 85828.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded *June 1st*, 1882.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, Disbursing Clerk, Department of State, on ℅ "Contingent Expenses Foreign Missions, 1881," from April 1st to December 31st, 1881, for , and find that he is chargeable, viz:

To balance due from him, per report No. 93590	$1,991.46
" warrants on the Treasurer, viz:	
No. 1007, dated April 27th, 1881	3,000.00
" 2339, " November 1st, 1881	275.78
	$5,267.24

I also find that he is entitled to credit—

By amount of his disbursements, 1881	$4,602.55
" " advanced T. F. Dwight, May 9th, 1881, with which he is to be charged	300.00
Balance due to the United States	364.69
	$5,267.24

as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

17 COMPTROLLER'S OFFICE.

Balance due U. S. per Auditor's report	$364.69
Deduct as per Comptroller's amended statement	355.00
Comptroller's corrected balance due U. S	$9.69

I admit and certify the above corrected balance of $9.69 due to U. S. this 21st day of September, 1882.

W. LAWRENCE,
Comptroller.

To the REGISTER.

18 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disb'g clerk, Dept. of State, on account contingent expenses foreign missions, 1881, *in account with the United States, from April 1st to December 31st,* 1881.

DR.		CR.	
To balance due from him, per report No. 93590	$1,991.46	By balance due to him, per report No.	
Per Register's certificate herewith.		Per Register's certificate herewith.	
Warrant on the Treasurer—			
No. 1007, dated April 27th, 1881	3,000.00		
" 2339, " Nov. 1st, 1881	275.78	This amount disbursed by him during said period	$4,957.55
Per Register's certificate herewith.		Amount advanced T. F. Dwight May 9th, 1881, with which he is to be charged	300.00
		Balance due U. S	9.69
	$5,267.24		$5,267.24
		Statement of difference:	
		Balance due to him per his account	$6.56
		" " from him per within	9.69
			$16.25
TREASURER'S DEPARTMENT, *Fifth Auditor's Office, June 1st,* 1882. J. E. SHEPHERD.		Thus accounted for: Amount overpaid to Gen'l E. O. C. Ord per voucher No. 11	$16.25

COMPTROLLER'S OFFICE, *Sept.* 21*st*, 1881.
DIPLOMATIC CONSULAR DIVISION.

JOS. A. D. THOMSON.

19 *Abstracts of disbursements by Robert C. Morgan, disbursing clerk, &c., Department of State, on account of appropriation for "Contingent Expenses Foreign Missions, 1881," during quarter ending June 30, 1881.*

No. of vouchers.	To whom paid.	On what account.	Amount.
1	Geo. W. Fish, Con. Tunis	Contingent expenses	$200.00
2	San Francisco Bulletin Co	" "	1.00
3	Radcliffe Baldwin	" "	569.16
4	J. F. and J. B. Murray	" "	12.40
5	Jas. J. Chapman	" "	18.00
6	B. Koch	" "	16.50
7	M. Scanlon	" "	368.30
8	Theo. F. Dwight	" "	300.00
9	Gazette Printing Co	" "	6.00
10	J. J. Chapman	" "	223.75
11	Gen'l E. O. C. Ord	" "	133.75
12	Western Union Tel. Co	" "	152.72
13	Washington Post Office	" "	15.00
14	B. Koch	" "	7.25
15	Lucius Fairchild	" "	149.96
16	American Union Tel. Co	" "	5.22
17	" " " "	" "	1.95
18	" " " "	" "	146.53
19	Western " " "	" "	451.15
20	" " " "	" "	28.12
21	F. C. Oakley	" "	48.00
22	B. Koch	" "	28.15
23	Jas. J. Chapman	" "	70.00
24	D. B. Ainger, P. M	" "	143.91
25	American Union Tel. Co	" "	27.73
26	Hooe, Brother & Co	" "	7.50
			$3,148.30

No. 8, Dwight.

R. C. Morgan,
Disbursing Clerk, &c.

20 *Abstract of the contingent expenses of Gen'l E. O. C. Ord, U. S. A., from the United States as bearer of dispatches to U. S. Minister, City of Mexico, from New York City, Feb. 6th, 1881, to Mexico, March 8th, 1881.*

No. of vouchers.		Dolls.Cts.	Total recd. Dolls.Cts.
I certify that it was not practicable to obtain proper vouchers for these expenses. E. O. C. Ord, Maj. Gen'l, U. S. A.	Amount paid, fare from New York to Galveston, Texas	$61.75	
	Porterage N. York at 50 cts., do. St. Louis (trains not connecting), $1.00	1.50	
	Amount paid, porterage, Galveston	1.00	
	Amount paid, fare from Galveston to Vera Cruz, Mexico	50.00	
	Amount paid, porterage and boat hire, Vera Cruz	2.50	
	Fifth Auditor's Jan. 1, 1882. Office.		
	Amount paid, fare from Vera Cruz to City of Mexico	16.00	
	Amount paid, porterage, at City of Mexico	1.00	
	Miscellaneous	....	
	Amount paid, total	$133.75	
	Amount due the United States	16.25	$150.00
	City of Mexico, April 30th, 1881. E. O. C. Ord, Maj. Gen'l, Retired.	150.00	

The United States to Gen'l E. O. C. Ord, dr., on account of the appropriation for contingent expenses of foreign missions, 1881.

Date. 1881.		Amount. Dolls.Cts.
Feb. 1.	For services as bearer of dispatches from Washington, D. C., to U. S. Minister, Mexico	150.00
	Fifth Auditor's Jan. 1, 1882. Office.	

Received —— this —— day of ——, 1881, from R. C. Morgan, D. C., the sum of one hundred and fifty $\frac{00}{100}$ dollars, in full payment of the above account.

E. O. C Ord,
Maj. Gen'l, Retired.

$150.00

21 **[Appropriation on account of contingent expenses, foreign missions, 1881.]**

ACCOUNT CURRENT FOR THE QUARTER ENDING JUNE 30TH, 1881.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

	DR.			CR.	
1881.			1881.		
	To amount due Robert C. Morgan, per last account		Mar. 31.	By balance due the United States, per last account	$1,991.46
June 30.	To payments made on acct. of appropriation for the quarter ending June 30th, 1881, per abstract and vouchers herewith	$3,148.30	Apr. 23.	By requisition on the Treasurer, No. 1594	3,000.00
	To amount due United States	1,843.16		By balance due from the United States	
		$4,991.46			$4,991.46

Approved:

JAMES G. BLAINE,
Secretary of State.

DEPARTMENT OF STATE,
June 30th, 1881.
R. C. MORGAN,
Disbursing Clerk, &c.

22 [Appropriation on account of contingent expense, foreign missions, 1881.]

ACCOUNT CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1881.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

	DR.			CR.	
1881.			1881.		
	To amount due Robert C. Morgan, per last account		June 30.	By balance due the United States, per last account	$1,843.16
Sept. 30.	To payments made on acct. of appropriation for the quarter ending September 30th, 1881, per abstract and vouchers herewith	$1,947.44		By requisition on the Treasurer, No. ——	
	To amount due United States			By balance due from the United States	104.28
		$1,947.44			$1,947.44

Approved:

JAMES G. BLAINE,
Secretary of State.

DEPARTMENT OF STATE,
September 30th, 1881.
R. C. MORGAN,
Disbursing Clerk, &c.

23 [Appropriation on account of contingent expenses, foreign missions, 1881.]

ACCOUNT CURRENT FOR THE QUARTER ENDING ——, 188—.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

	DR.			CR.	
1881.			1881.		
Sept. 30.	To amount due Robert C. Morgan, per last account	$104.28		By balance due the United States, per last account	
Dec. 31.	To payments made on acct. of appropriation for the quarter ending Dec. 31st, 1881, per abstract and vouchers herewith	178.06	Oct. 28.	By requisition on the Treasurer, No. 1999	$275.78
	To amount due United States		Dec. 31.	By balance due from the United States	6.56
		$282.34			$282.34

Approved:

FRED'K T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE,
December 31st, 1881.
R. C. MORGAN,
Disbursing Clerk, &c.

24 No. 96983. (Form 13.)

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE,
December 1st, 1882.

Recorded ———.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on ℅ "contingent expenses foreign missions, 1881," for quarter ended June 30th, 1882, for 188—, and find that he is chargeable, viz:

To balance due from him, per report No. 95828	$9.69
To warrants on the Treasurer, viz, No. 1145, dated May 17th, 1882	1,857.21
	$1,866.90

I also find that he is entitled to credit—

By balance due to him, per report No. ——.	....
By amount of his disbursements during said quarter, 1882	$1,850.65
By warrant in favor of the Treasurer, viz, No. ——, dated ——, 188—....	....
Balance due the United States	16.25
	$1,866.90

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER, *Fifth Auditor.*
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above $16.25, balance due U. S. this 5th day of December, 1882.

W. LAWRENCE, *Comptroller.*
I. A. T.

To the REGISTER OF THE TREASURY.

25 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disb'g clk., State Dept., on account contingent expenses, foreign missions, 1881. *In account with the United States, for the quarter ending June 30th*, 1882.

DR.		CR.	
To balance due from him, per report No. 95828, per Register's certificate herewith	$9.69	By balance due to him, per report No. ———, per Register's certificate herewith	
Warrant on the Treasurer, No. 1145, dated May 17th, 1882	1,857.21	This amount disbursed by him during said quarter	$1,850.65
		Balance due U. S.	16.25
Per Register's certificate herewith	$1,866.90		$1,866.90

Comptroller's Office,
Dec. 5, 1882.
Diplomatic and
Consular Division.

JOS. A. D. THOMSON.

Statement of difference:

Balance due U. S., per within	$16.25
" " " " his account	
Difference	$16.25

Thus accounted for:

Amount overpaid Gen'l E. O. C. Ord., per report No. 95828	$16.25
Explained difference	$16.25

TREASURY DEPARTMENT,
Fifth Auditor's Office,
Dec. 1st, 1882.

J. E. SHEPHERD.

26 [Appropriation on account of contingent expenses, foreign missions, 1881.]

ACCOUNT CURRENT FOR THE QUARTER ENDING JUNE 30TH, 1882.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

Dr.					Cr.
1881.			1882.		
Dec. 31.	To amount due Robert C. Morgan, per last account	$6.56		By balance due the United States, per last account	
1882.			May 16.	By requisition on the Treasurer. No. 2365	$1,857.21
June 30.	To payments made on account of appropriation for quarter ending June 30th, 1882, per abstract and vouchers herewith	1,850.65		By balance due from the United States	
	To amount due United States				
		$1,857.21			$1,857.21

Approved:

JOHN DAVIS,
Acting Secretary of State.

DEPARTMENT OF STATE,
June 30th, 1882.

R. C. MORGAN,
Disbursing Clerk, &c.

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27 No. 99996. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 9th, 1884.

Recorded——

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of contingent expenses foreign missions, 1882, for quarter ended Sept. 30th, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per report No. 98,773	$1,119.53
To warrants on the Treasurer, viz.: No. , dated , 188	
	$1,119.53

I also find he is entitled to credit—

By balance due to him, per report No.	
By amount of his disbursements , 188	
By warrant in favor of the Treasurer, viz.: No. , dated , 188	
Balance due the United States	$1,119.53
	$1,119.53

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER of THE TREASURY:

28	Balance per Auditor's report, brought down	$1,119.53
	From which deduct, per Comptroller's amended statement	20.17
	Corrected balance due to the United States	$1,099.36

COMPTROLLER'S OFFICE.

I admit and certify the above corrected balance, $1,099.36, due to United States this 13th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

29 [Office of the Fifth Auditor of the Treasury—Form 13½.]

R. C. Morgan, disb'g clerk, Dept. of State, on account of contingent expenses foreign missions, 1882, in account with the United States, for the quarter ending September 30th, 1883.

DR.		CR.	
To balance due from him, per report No. 98773	$1,119.53	By balance due to him, per report No.	
Per register's certificate herewith.		Per register's certificate herewith.	
Warrant on the Treasurer.		This amount disbursed by him during said quarter	$20.17
Per register's certificate herewith.		Balance due from him	1,099.36
	$1,119,53		$1,119.53

COMPTROLLER'S OFFICE, *March 13th*, 1884.
EDMUND WINNE.

Balance agreeing with Mr. Morgan's account current ... $1,099.36

See letter from Department of State authorizing Mr. Morgan to pay draft of consul at Tangiers for $500, and allowed per report No. 97,037.

The amount allowed in this adjustment covers the balance of draft for $20.17 drawn by F. A. Matthews on account of expenses.

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Jan'y 9th, 1883.
J. E. SHEPHERD.

30 [Appropriation on account of contingent expenses foreign missions, 1882.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States in account with Robert C. Morgan disbursing clerk, &c.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		June 30	By balance due the United States, per last account	$1,119.53
Sept. 29	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	$20.17		By requisition on the Treasurer, No.	
" "	To amount due United States	1,099.36		By balance due from the United States	
		$1,119.53			$1,119.53

Approved:
FRED'K T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *September 29th*, 1883.
R. C. MORGAN, *Disbursing clerk, &c.*

31 No. 100851. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded ——. *April 14th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department of State, on account of contingent expenses foreign missions, 1882, from October 1st, 1883, to January 26th, 1884, for 188—, and find that he is chargeable, viz:

To balance due from him, per report No. 99996	$1, 099. 36
To warrants on the treasurer, viz, No. ——, dated ———, 188—....................	
	$1, 099. 36

I also find that he is entitled to credit—

By balance due to him, per report No. ——	
By amount of his disbursements, 188—	$300. 00
By warrant in favor of the Treasurer, viz, No. ——, dated ———, 188—............	
Balance due the United States of...	799. 36
	$1, 099. 36

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. Alexander,
Fifth Auditor.
A. O. L.

To the First Comptroller of the Treasury.

32 Comptroller's Office.

I admit and certify the above balance, $799\frac{36}{100}$, due to U. S. this 21st day of April, 1884.

Wm. Lawrence,
Comptroller.
By J. Tarbel,
Deputy Comptroller.
J. R. G.

To the Register of the Treasury.

33 [Appropriation on account of contingent expenses foreign missions, 1882.]

ACCOUNT CURRENT FOR THE FRACTIONAL QUARTER ENDING JANUARY 26TH, 1884.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

Dr.			Cr.		
1884.			1883.		
	To amount due Robert C. Morgan, per last account.......		Sep. 29.	By balance due the United States, per last account....	$1, 099. 36
Jan. 26.	To payments made on account of appropriation for the fractional quarter ending January 26th, 1884, per abstract and vouchers herewith......	$300. 00		By requisition on the Treasurer No. ——	
	To amount due United States..	799. 36		By balance due from the United States	
	Fifth Auditor's April 14, 1884. Office.				
		$1, 099. 36			$1, 099. 36

Approved:
Fredk. T. Frelinghuysen,
Secretary of State.

Department of State,
January 26th, 1884.

R. C. Morgan,
Disbursing Clerk, &c.
Per his successor in office,
F. J. Kieckhoefer.

This amount is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. Kieckhoefer.

34 No. 100000. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded ——. *January 9th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of contingent expenses foreign missions, 1884, for the quarter ended September 30th, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per report No. ——	
To warrants on the Treasurer, viz.:	
No. 1,829, dated July 5th, 1883	$5,000.00
No. 2,362, dated Sept. 12th, 1883	10,000.00
	$15,000.00

I also find that he is entitled to credit—

By balance due to him, per report No.——	
By amount of his disbursements 188	$4,786.17
By warrant in favor of the Treasurer, viz:	
No. , dated , 188	
Balance due the United States of	10,213.83
	$15,000.00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L. C.

To the FIRST COMPTROLLER OF THE TREASURY.

35 Balance per Auditor's report brought down	$10,213.83
From which deduct per Comptroller's amended statement	534.01
Corrected balance due to the United States	9,679.82

COMPTROLLER'S OFFICE.

I admit and certify the above corrected $\$9{,}679\frac{82}{100}$ balance this 13th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

36 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

***R. C. Morgan, disb'g clerk, Dept. of State, on account contingent expenses foreign missions,* 1884, *in account with the United States, for the quarter ending September 30th,* 1883.**

Dr.		Cr.	
To balance due from him, per report No. —.		By balance due to him, per report No. —.	
Per register's certificate herewith.		Per register's certificate herewith.	
Warrant on the Treasurer—			
No. 1829, dated July 5th, 1883	$5,000.00		
" 2362, " Sept. 12th, 1883	10,000.00		
Per register's certificate herewith.			
		This amount disbursed by him during said quarter	$5,320.18
		Balance due from him	9,679.82
	$15,000.00		$15,000.00

Comptroller's Office, *March 13th*, 1884.
Edmund Winny.

Statement of difference:

Balance due from him per within		$9,679.82
" " " " " his account		9,679.32
Difference		50
Thus accounted for—		
Overcharge in sub-voucher No. 50, per abstract voucher No. 36		
H. Howe's account of expenses, charged in account as	$32.75	
Whereas the correct amount should be	32.25	
		50
Difference explained		50

Treasury Department,
Fifth Auditor's Office, *Jan'y 9th*, 1884.
J. E. Shepherd.

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37 [Appropriation on account of contingent expenses Foreign Missions, 1884.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30th, 1883.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

Dr.			Cr.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account			By balance due the United States, per last account	
Sept. 29.	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	$5,320.68	July 3.	By requisition on the Treasurer, No. 3236	$5,000.00
" "	To amount due United States	9,679.32	Sept. 11.	By requisition on the Treasurer, No. 3389	10,000.00
				By balance due from the United States	
		$15,000.00			$15,000.00

Approved:
Fredk. T. Frelinghuysen, *Secretary of State.*

Department of State, *September 29th*, 1883.
R. C. Morgan, *Disbursing Clerk, &c.*

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38 No. 100849. (Form 13.)

Treasury Department,
Fifth Auditor's Office,
April 12th, 1884.

Recorded ——

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department

of State, on account of contingent expenses foreign missions, 1884, from October 1st, 1883, to January 26th, 1884, for 188 , and that he is chargeable, viz:

To balance due from him, per report No. 100000	$9,679.82
To warrants on the Treasury, viz:	
No. 2762, dated November 17th, 1883	5,000.00
No. 7, dated January 3d, 1884	5,000.00
	$19,679.82

I also find that he is entitled to credit—

By amount of his disbursements, ——, 188 ,	$4,189.40
By amount of his disbursements with which T. Carrisuis, U. S. consul at Apia, is to be charged on a/c cont. expenses foreign missions, 1884	72.00
By warrant in favor of the Treasury, viz:	
No. 604, dated April 11th, 1884	.50
Balance due the United States of	15,417.92
	$19,679.82

As appears appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

39 COMPTROLLER'S OFFICE.

I admit and certify the above balance $15,487$\frac{92}{100}$ due to the U. S. this 21st day of April, 1884.

WM. LAWRENCE,
Comptroller.
By J. TARBELL,
Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

40 [Appropriation on account of contingent expenses foreign missions, 1884.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING DECEMBER 31ST, 1883.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		Sept. 29.	By balance due the United States, per last account	$9,679.32
Dec. 31.	To payments made on account of appropriation for the quarter ending December 31st, 1883, per abstract and vouchers herewith	$3,182.12	Nov. 12.	By requisition on the Treasurer No. 3512	5,000.00
	To amount due United States	11,497.20		By balance due from the United States	
		$14,679.32		Fifth Auditor's Office. April 12, 1884.	$14,679.32

Approved: FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *December* 31st, 1883.
R. C. MORGAN, *Disbursing Clerk*, &c.,
Per his successor in office, F. J. KEICKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KEICKHOEFER.

41 [Appropriation on account of contingent expenses foreign missions, 1884.]

ACCOUNT-CURRENT FOR THE FRACTIONAL QUARTER ENDING JANUARY 26th, 1884.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

Dr.			Cr.		
1884.			1883.		
	To amount due Robert C. Morgan, per last account		Dec. 31.	By balance due the United States, per last account....	$11,497.20
Jan. 26.	To payments made on account of appropriation for the fractional quarter ending Jan. 26th, 1884, per abstract and vouchers herewith	$1,079.28	1884.		
	To amount due United States.	15,417.92	Jan. 2.	By requisition on the Treasurer, No. 3585..................	5,000.00
				By balance due the United States	
				Fifth Auditor's Office. April 12th, 1884.	
		$16,497.20			$16,497.20

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE *January 26th*, 1884.
R. C. MORGAN, *Disbursing Clerk, &c.*,
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

42 No. ——. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,

Recorded 101449. *June 26th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department of State, on account of contingent expenses foreign missions, 1884. Supplemental for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No. 100849	$15,417.92
To warrants on the Treasurer, viz:	
No , dated , 188 , ...	
	$15,417.92

I also find that he is entitled to credit—

By balance due to him, per Report No. 101217 (J. W. Siler)	345.00
By amount of his disbursements , 188	
By warrants in favor of the Treasurer, viz:	
No. 883, dated June 19th, 1884..................................	590.76
" 884, " " " "	8,275.07
Balance due the United States of	6,307.09
	$15,417.92

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

43 COMPTROLLER'S OFFICE.

I admit and certify the above balance $6,307.09 due United States this 30th day of June, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

44 TREASURY DEPARTMENT.

OFFICE OF THE SECRETARY OF THE TREASURY.
Division of Warrants, Estimates and Appropriations.
Form 32.

Miscellaneous.
[Diplomatic cut].

To R. C. MORGAN, late D. C., State Dept.:

Fifth Auditor's
June 26, 1884.
Office.

Pay to the Treasurer of the United States, to be credited to the appropriations named in the margin of this warrant seventeen thousand five hundred and forty-four dollars and five cents. Deposited per list No. , herewith, on account of moneys heretofore advanced to you, and with which you are now to be credited. For so doing this shall be your warrant.

Repay Covering.
Warrant.
No. 883.
$17,544.05

APPROPRIATIONS.

'84
Cont'g't Exp's Foreign Missions 490. 76

Dept. with Treas. U. S., June 12, 1884

Treasurer's Office,
Jan. 24, 1884,
3 P. M.
Division of Accounts.

17, 544. 05

[SEAL.]
(Umn. S.)

Given under my hand and the sea of the Treasury Department this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of Independence the one hundred and eighth.

C. E. COON,
Asst. Secretary.

673.
675.
Countersigned:
S. S.: 21.

WM. LAWRENCE,
First Comptroller.
By J. TARBELL,
Deputy First Comptroller.

REGISTERED:
C. U. S. 23.

W. P. TITCOMB,
Asst. Register.

H. Office of the
TREASURER OF THE UNITED STATES.
L. Received June 26, 1884.
W. E. O. GRAVES,
C. Asst. Treasurer.

45 TREASURY DEPARTMENT.

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates and Appropriations.
Form 32.

Miscellaneous.
[Diplomatic cut].

To R. C. MORGAN, late D. C., State Dept.

{ Fifth Auditor's June 26, 1884. Office. }

Pay to the Treasurer of the United States, to be credited to the appropriations named in the margin of this warrant, fourteen thousand nine hundred and twelve dollars and forty-six cents. Deposited per list No. , herewith, on account of moneys heretofore advanced to you, and with which you are now to be credited. For so doing this shall be your warrant.

Repay covering
Warrant.
No. 884.
$14,912.46.

APPROPRIATIONS.

.48.

'84. Con'g't exp's Foreign Missions	8, 275. 07
Pub. of consular and other commercial reports Dept. of State	6, 637. 39

Department with A. Tr. U. S at New York, N. Y., June 13, 1884.

{ Foreign Office.
June 24, 1884.
3 P. M.
Division of Accounts }

14, 912 46

Given under my hand and the seal of the Treasury Department this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of Independence the one hundred and eighth.

[SEAL]
(Umn. L.)

C. E. COON,
Asst. Secretary.

675.

Countersigned:
679. S. S.: 21

WM. LAWRENCE,
First Comptroller.

By J. TARBELL,
Dep'y First Comptroller.

REGISTERED:
C. U. S. 23.

W. P. TITCOMB,
Asst. Register.

H. Office of the
TREASURER OF THE UNITED STATES.
L. Received June 26, 1884.
W. E. O. GRAVES,
C. Asst. Treasurer.

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46 No. 100002. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 10*th*, 1884.

Recorded ——

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of contingent expenses U. S. Consulates, 1882, for the quarter ended Sept. 30th, 1883, for 188 , and find that he is chargeable, viz.

To balance due from him, per report No. 99515	$277. 64
To warrants on the Treasurer, viz:	
No. , dated , 188 .	
	$277. 64

I also find that he is entitled to credit—

By balance due to him, per report No.	
By amount of his disbursements , 188	
By warrant in favor of the Treasurer, viz: No. dated , 188	
Balance due the United States of	$277 64
	$277 64

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

47	Balance per Auditor's report, brought down	$277. 64
	From which deduct, per Comptroller's amended statement	22. 85
	Corrected balance due to the United States	$254. 79

COMPTROLLER'S OFFICE.

I admit and certify the above corrected balance, $\$254\frac{79}{100}$, due to U. S. this 13th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

48 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disb'g clerk, Dept. of State, on account contingent expenses U. S. consulates, 1882, in account with the United States for the quarter ending September 30th, 1883.

DR.		CR.	
To balance due from him, per report No. 99515	$277. 64	By balance due to him, per report No.	
Per Register's certificate herewith.		Per Register's certificate herewith.	
Warrant on the Treasurer		This amount disbursed by him during said quarter	$22. 85
Per Register's certificate herewith.		Balance due from him of	254. 79
	$277. 64		$277. 64
TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, *January*, 1884. J. E. SHEPHERD.		COMPTROLLER'S OFFICE, *March 13th*, 1884. EDMUND WINNE. Balance agreeing with Mr. Morgan's statement	$254. 79

49 [Appropriation on account of contingent expenses U. S. consulates, 1882.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States in account with Robert C. Morgan disbursing clerk, &c.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		Mar. 31.	By balance due the United States, per last account	$277. 64
Sept. 29.	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	$22. 85		By requisition on the treasurer, No	
	To amount due United States	254. 79		By balance due from the United States	
			Fifth Auditor's Office. Jan. 10th, 1884.		
		$277. 64			$277. 64
Approved: FREDK. T. FRELINGHUYSEN, *Secretary of State.*			DEPARTMENT OF STATE, *September 29th*, 1883. R. C. MORGAN, *Disbursing Clerk, &c.*		

50 142 No. 100852. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded ——. *April 14th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department of State, on account of contingent expenses of U. S. consulates, 1882, for the quarter ending December 31st, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per report No. 100002	$254.79
To warrants on the Treasury, viz:	
No. , dated , 188..	
	$254.79

I also find that he is entitled to credit—

By balance due to him, per Report No.	
By amount of his disbursements , 188	77.87
By warrant in favor of the Treasurer, viz:	
No. , dated 188 ,	
Balance due the United States of	176.92
	$254.79

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

51 COMPTROLLER'S OFFICE.

I admit and certify the above balance $\$176\frac{92}{100}$ due to United States this 21st day of April, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

52 [Appropriation on account of contingent expenses United States consulates, 1882.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING DECEMBER 31ST, 1883.

• *The United States, in account with Robert C. Morgan, disbursing clerk, &c.*

DR.					CR.
1883.			1883.		
	To amount due Robert C. Morgan, per last account		Sept. 29.	By balance due the United States, per last account	$254.79
Dec. 31.	To payments made on account of appropriation for the quarter ending December 31st, 1883, per abstract and vouchers herewith	$ 77.87		By requisition on the Treasurer, No	
" "	To amount due United States	176.92		By balance due from the United States	
		$254.79			$254.79

Approved:
FREDK. T. FRELINGHUYSEN, *Secretary of State.*

DEPARTMENT OF STATE, *December 31st*, 1883.
R. C. MORGAN, *Disbursing Clerk, &c.*
Per his successor in office, F. J. KIECKHOEFER.

This is account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

53 No. 100001. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 10th, 1884.

Recorded ——

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of contingent expenses U. S. consulates, 1883, for the quarter ending September 30th, 1883, for 188—, and find that he is chargeable, viz:

To balance due from him, per report No. 99512	$19,686.06
" Warrants on the Treasurer, viz:	
No. , dated 188	
	$19,686.06

I also find he is entitled to credit—

By amount of his disbursements , 188	$370.80
" Warrant in favor of the Treasurer, viz.:	
No. , dated , 188 ,	
Balance due the United States of	19,315.26
	$19,686.06

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.

A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

54 Balance per Auditor's report, brought down	$19,315.26
From which deduct, per Comptroller's amended statement	11,743.01
Corrected balance due to the United States	$7,572.25

COMPTROLLER'S OFFICE.

I admit and certify the above corrected balance $7,572 $\frac{25}{100}$ this 13th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

55 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disbursing clerk, Department of State, on account contingent expenses U. S. consulates, 1882, in account with the United States for the quarter ending September 30th, 1883.

DR.		CR.		
To balance due from him, per report No. 99512, per Register's certificate herewith	$19,686.06	By balance due to him, per report No. per Register's certificate herewith		
Warrant on Treasurer		This amount disbursed by him during said quarter		$12,113.81
Per Register's certificate herewith.		Balance due from him		7,572.25
	$19,686.06			19,686.06
Balance agreeing with Mr. Morgan's statement	$7,572.25	Note: Amounts allowed in this adjustment, vouchers being filed with the accounts herewith.	$10,437.37	
		Amounts allowed with approval of the Comptroller, in absence of vouchers	1,305.64	
		Auditor's memorandum.	370.80	
				$12,113.81

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE, *January 10th*, 1884.
J. E. SHEPHERD.

COMPTROLLER'S OFFICE, *March 13th*, 1884.
EDMUND WINNE.

56 [Appropriation on account of contingent expenses U. S. consulates, 1883.]

ACCOUNT CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		June 30.	By balance due the United States per last account	$23,186.06
Sept. 29.	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	$12,113.81		By requisition on the Treasurer, No. ,	
" "	To amount due the United States	7,572.25		By balance due from the United States	
Aug. 7.	To deposit in U. S. Treasury certificate No. 29163	1,500.00			
" 17.	To deposit in U. S. Treasury certificate No. 29223	2,000.00			
		$23,186.06			$23,186.06

Approved:
FREDK. T. FRELINGHUYSEN, *Secretary of State.*

DEPARTMENT OF STATE, *September 29th*, 1883.
R. C. MORGAN, *Disbursing Clerk, &c.*

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57 No. 100853. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
April 14th, 1884.

Recorded ——

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department

of State, on account of contingent expenses, U. S. consulate, 1883, from October 1st, 1883, to January 26th, 1884, for 188 , and find that he is chargeable, viz:

To balance due from him, per report No. 100001	$7,572.25
To warrants on the Treasurer, viz:	
No. , dated , 18 .	
	$7,572.25

I also find that he is entitled to credit—

By amount of his disbursements:	
, 188 , ...	$1,724.08
By warrant in favor of the Treasurer, viz:	
No. 2405, dated December 18th, 1883	2,000.00
Amount with which Edgar M. Stanton, U. S. consul-general to St. Petersburg, is to be charged on account of contingent expenses U. S. consulates, 1883	192.15
Balance due the United States of	3,656.02
	$7,572.25

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

58 COMPTROLLER'S OFFICE.

I admit and certify the above balance $3,656\frac{02}{100}$ due to U. S. this 21st day of April, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

59 [Appropriation on account of contingent expenses United States Consulates, 1883.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING DECEMBER 31ST, 1883.

The United States in account with Robert C. Morgan, Disbursing Clerk, &c.

DR.					CR.
1883.			1883.		
	To amount due Robert C. Morgan, per last account		Sept. 29.	By balance due the United States, per last account ..	$7,572.25
Dec. 31.	To payments made on account of the appropriation for the quarter ending December 31st, 1883, per abstract and vouchers herewith	$1,900.90		By requisition on the Treasury, No.	
	To amount due United States.			By balance due from the United States	
	To amount deposited in U. S. Treasury as per certificate of deposit No. 29801	2,000.00			
	To amount due United States.	3,671.35			
		$7,572.25			$7,572.25

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *December 31st*, 1883.
R. C. MORGAN, *Disbursing Clerk, &c.*
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

60 [Appropriation on account of contingent expenses U. S. Consulate, 1883.]

ACCOUNT-CURRENT FOR THE FRACTIONAL QUARTER ENDING JANUARY 26TH, 1884.

The United States in account with Robert C. Morgan, Disbursing Clerk, &c.

Dr.			Cr.		
1884.	To amount due Robert C. Morgan, per last account		1884. Dec. 31.	By balance due the United States, per last account..	$3,671.35
Jan. 26.	To payments made on account of appropriation for the fractional quarter ending Jan. 26th, 1884, per abstract and vouchers herewith	$15.33		By requisition on the Treasurer, No.	
" "	To amount due United States.	3,656.02		By balance due from the United States	
		$3,671.35			$3,671.35

Approved:
FRED'K T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *January 26th*, 1884.
R. C. MORGAN, *Disbursing Clerk, &c.*
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

61 No. 100024. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,

Recorded .... *January 11th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of bringing home criminals, 1883, for the quarter ended September 30th, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No. 99518	$1,453.13
To warrants on the Treasurer, viz: No. , dated , 188	....
	1,453.13

I find no credits thereon—

By balance due to him per Report No.	
By amount of his disbursements , 188	
By warrant in favor of the Treasurer, viz: No. , dated , 188	
Balance due the United States of...	$1,453.13
	1,453.13

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.

A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

62	Balance per Auditor's report, brought down	$1,453.13
	From which deduct per Comptroller's amended statement...........	720.81
	Corrected balance due to the United States................................	$732.32

I admit and certify the above corrected balance, $732 $\frac{32}{100}$, due to U. S. this 13th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

63 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disb'g clerk, Dept. of State, on account bringing home criminals, 1883, in account with the United States for the quarter ending September 30th, 1883.

Dr.		Cr.	
To balance due from him per Report No. 99518 per Register's certificate herewith	$1,453.13	By balance due to him per Report No. , per Register's certificate herewith	
Warrant on the Treasurer		This amount disbursed by him during said quarter	$720.81
Per Register's certificate herewith.		Balance due from him	732.32
	$1,453.13		$1,453.13

Balance agreeing with Mr. Morgan's statement $732.32

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 11*th*, 1884.
J. E. SHEPHERD.

NOTE.—Amounts allowed in this adjustment, vouchers filed herewith:

Charles Klinck	$52.14
R. D. Tucker	31.00
Approved by the Comptroller:	
Adam Badeau	575.12
J. B. Erhardt	62.55
	$720.81

COMPTROLLER'S OFFICE, *March* 13*th*, 1884.
EDMUND WINNE.

*This amount has been repaid to the U. States September 29th, 1883. Warrant No. 2,040.

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64 [Appropriation on account of bringing home criminals, 1883.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

Dr.		Cr.	
1883.		1883.	
June 30. To amount due Robert C. Morgan per last account	$192.56	By balance due the United States, per last account	
Sept. 29. To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	575.12	Aug. 30. By requisition on the Treasurer, No. 3370	$1,500.00
To amount due United States.	732.32	By balance due from the United States	
	$1,500.00		$1,500.00

Approved:
FREDK. T. FRELINGHUYSEN, *Secretary of State.*

DEPARTMENT OF STATE, *September* 29*th*, 1883.
R. C. MORGAN, *Disbursing Clerk, &c.*

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65 No. 100025. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 11*th*, 1884.

Recorded ——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of expenses under the neutrality act, 1883, for the quarter ending September 30th, 1883, for 188 , and find that he is chargeable, viz.:

To balance due from him, per report No. 99516	$4,116.27
To warrants on the Treasurer, viz.:	
No. , dated , 188	
	$4,116.27

I also find that he is entitled to credit—

By balance due to him, per report No	
By amount of his disbursements , 188	$242.50
By warrant in favor of the Treasurer, viz.:	
No. , dated , 188 .	
Balance due the United States of	3,873.77
	$4,116.27

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $3,873.77 due to U. S. this 16th day of January, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.

To the REGISTER OF THE TREASURY.

66 [Appropriation on account of expenses under the neutrality act, 1883.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States in account with Robert C. Morgan, disbursing clerk, etc.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		June 30.	By balance due the United States, per last account	$1,116.27
Sept. 29.	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith	$242.50	Sept. 3.	By requisition on the Treasurer No. 3373	3,000.00
	To amount due United States	3,873.77		By balance due from the United States	
		$4,116.27			$4,116.27

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *September 29th*, 1883.
R. C. MORGAN,
Disbursing Clerk, etc.

67 No. 100026. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded ——. *January* 11*th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of International Fishing Exhibition of 1883, at London, for the quarter ending September 30th, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No. 99519	$5,758.45
" warrants on the Treasurer, viz:	
No. , dated , 188	
	$5,758.45

I also find that he is entitled to credit—

By amount of his disbursements , 188	$2,284.86
" warrant in favor of the Treasurer, viz:	
No. , dated , 188	
Balance due the United States of..	$3,473.59
	$5,758.45

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance, $3,473 $\frac{59}{100}$, due to U. S. this 16th day of January, 1884.

WM. LAWRENCE,
Comptroller.
By J. TARBELL,
Deputy Comptroller.

To the REGISTER OF THE TREASURY.

68 [Appropriation on account of International Fishing Exhibition of 1883 at London.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING SEPTEMBER 30TH, 1883.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

DR.			CR.		
1883.			1883.		
	To amount due Robert C. Morgan, per last account		June 30.	By balance due the United States, per last account.....	$5,758.45
Sept. 29.	To payments made on account of appropriation for the quarter ending Sept. 30th, 1883, per abstract and vouchers herewith....	$2,284.86		By requisition on the Treasury, No.	
Sept. 29.	To amount due United States	3,473.59		By balance due from the United States...............	
		$5,758.45			$5,758.45

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *September 29th*, 1883.
R. C. MORGAN,
Disbursing Clerk, &c.

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69 No. 100458. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
March 13th, 1884.

Recorded ——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, State Department, on account of International Fishery Exhibition of 1883, at London, for the quarter ended December 31st, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per report No. 100026	$3,473.59
To warrants on the Treasurer, viz:	
No. , dated , 188 .	
	3,473.59

I also find that he is entitled to credit:

By amount of disbursements , 188	$3,097.66
By warrant in favor of the Treasurer, viz:	
No. , dated , 188	
Balance due the United States of	375.93
	3,473.59

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $375\frac{93}{100}$ due to U. S. this 17th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

70 [Appropriation on account of International Fishery Exhibition of 1883, at London.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING DECEMBER 31ST, 1883.

The United States, in account with Robert C. Morgan, disbursing clerk, &c.

	Dr.			Cr.	
1883.			1883.		
	To amount due Robert C. Morgan, per last account.		Sept. 29.	By balance due the United States, per last account	$3,473.59
Dec. 31.	To payments made on account of appropriation for the quarter ending December 31st, 1883, per abstract and vouchers herewith	$3,097.66		By requisition on the Treasury, No.	
Dec. 31.	To amount due United States	375.93		By balance due from the United States	
		3,473.59			3,473.59

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *December 31st*, 1883.
R. C. MORGAN, *Disbursing Clerk, &c.*,
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller.

F. J. KIECKHOEFER.

71 No. 100857. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
Recorded—— *April 14th*, 1884.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department of State, on account of International Fishery Exhibition of 1883, at London, from January 1st, 1884, to January 26th, 1884, for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No. 100458	$375.93
To warrants on the treasurer, viz: No. , dated , 188	
	$375.93

I also find that he is entitled to credit—

By amount of his disbursements , 188	$90.00
By warrant in favor of the treasurer, viz: No. , dated , 188	
Balance due the United States of	285.93
	375.93

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $285.93 due to United States, this 21st day of April, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

72 [Appropriation on account of International Fishery Exhibition of 1883, at London.]

ACCOUNT-CURRENT FOR THE FRACTIONAL QUARTER ENDING JANUARY 26TH, 1884.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

DR.					CR.
1884.			1883.		
	To amount due Robert C. Morgan, per last account		Dec. 31.	By balance due the United States, per last account......	$375.93
Jan. 26.	To payments made on account of appropriation for the fractional quarter ending January 26th, 1884, per abstract and vouchers herewith	$90.00		By requisition on the Treasurer, No............	
	To amount due United States..	285.93		By balance due from the United States........	
		$375.93			$375.93

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *January 26th*, 1884.
R. C. MORGAN, *Disbursing Clerk, &c.*,
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

73 No. 99520. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
October 4th, 1883.

Recorded ——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of International Commission for the Establishment of Electrical Units for the quarter ended June 30th, 1883, for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No	
To warrants on the Treasurer, viz:	
No. 1701, dated June 20th, 1883	$750. 00
	$750. 00

I also find no credits thereon—

By balance due to him, per Report No.	
By amount of his disbursements, , 188	
By warrant in favor of the Treasurer, viz:	
No. , dated , 188	
Leaving a balance due the United States of	$750. 00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

J. B. MANN,
Acting Fifth Auditor.
A. O. V.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $\$750\frac{00}{000}$ due to U. S. this 9th day of October, 1883.

J. TARBELL,
Acting Comptroller.

To the REGISTER OF THE TREASURY.

28973——3

74 [Official of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. Morgan, disb'g clerk, Dept. of State, on a/c International Commission for the Establishment of Electrical Units, in account with the United States for the quarter ending June 30th, 1883.

Dr.

To balance due from him, per Report No.	
Per Register's certificate herewith.	
Warrant on the Treasurer No. 1701 dated June 20th, 1883	$750.00
Per Register's certificate herewith.	
	$750.00
Statement of difference	
Balance due from him per within	$750.00
Balance due from him per his account	0.00
Difference	$750.00
Explained thus: Voucher No. 1 suspended to await the filing of a receipt signed by Mr. Knowland, or other satisfactory evidence of his having received the money	$750.00

Treasury Department,
Fifth Auditor's Office, Oct. 4th, 1883.
J. E. Shepherd.

Cr.

By balance due to him, per Report No.	
Per Register's certificate herewith.	
This amount disbursed by him during said quarter	
Balance due from him	$750.00
	$750.00

Comptroller's Office,
October 9th, 1883.
Edmund Winne.

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75 [Appropriation on account of International Commission for the Establishment of Electrica Units.]

ACCOUNT-CURRENT FOR THE QUARTER ENDING JUNE 30TH, 1883.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

Dr.

1883.		
	To amount due Robert C. Morgan, per last account	
June 30.	To payments made on account of appropriation for the quarter ending June 30th, 1883, per abstract and vouchers herewith	$750.00
	To amount due United States	$750.00

Approved:
John Davis, *Acting Secretary of State.*

Cr.

1883.		
	By balance due the United States, per last account	
June 16.	By requisition on the Treasurer, No. 3205	$750.00
	By balance due from the United States	
		$750.00

Department of State, *June 30th*, 1883.
R. C. Morgan, *Disbursing Clerk, &c.*

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76 No. 100119. (Form 13.)

Treasury Department,
Fifth Auditor's Office,
January 29th, 1884.

Recorded ——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, disbursing clerk, Department of State, on account of International Commission for the Establishment of Electrical Units, supplemental to Report No. 99520, for 188 , and find that he is chargeable, viz:

To balance due from him, per Report No. 99520	**$750.00**
" warrants on the Treasurer, viz: No. 2509, dated Oct. 8th, 1883	**5,000.00**
	$5,750.00

I also find that he is entitled to credit—

By amount of his disbursements suspended from report, 188 , No. 99520, now allowed	750.00
By warrant in favor of the Treasurer, viz: No. , dated , 188 .	
Balance due the United States of	$5,000.00
	$5,750.00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance, $5,000, due to U. S. this 5th day of February, 1884.

WM. LAWRENCE,
Comptroller,
By J. TARBELL,
Deputy Comptroller.

To the REGISTER OF THE TREASURY.

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77 [Office of the Fifth Auditor of the Treasury.—Form 13½.]

R. C. MORGAN, Disb'g Clerk, Dept. of State, on ℅ International Commission for the Establishment of Electrical Units, in account with the United States, supplemental to Report No. 99520, for the quarter ending —— —, 188–.

DR.		CR.	
To balance due from him, per Report No. 99520	$750.00	By balance due to him, per report No.	
Per Register's certificate herewith.		Per Register's certificate herewith.	
Warrant on Treasurer, No. 2509, dated October 8th, 1883	$5,000.00	Amount of his disbursements suspended, per Report No. 99520, now allowed	$750.00
Per Register's certificate herewith.		Balance due from him	5,000.00
		This amount disbursed by him during said quarter	
	$5,750.00		$5,750.00
Warrant No. 2509, dated Oct. 8th, 1883, not credited by Mr. Morgan.	$5,000.00		

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
January 29th, 1884.
J. E. SHEPHERD.

COMPTROLLER'S OFFICE,
February 5th, 1884.
EDMUND WINNE.

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78 No. 100417. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
March 11th, 1884.

Recorded ——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department of

State, on account of International Commission for the Establishment of Electrical Units, for 188–, and find that he is chargeable, viz:

To balance due from him, per Report No. 100119	$5,000.00
" Warrants on the Treasurer, viz:	
No. ——, dated —— —, 188–.	
	$5,000.00

I also find that he is entitled to credit—

By amount of his disbursements, 188–	$2,281.76
By warrant in favor of the Treasurer, viz:	
No. ——, dated —— —, 188–.	
Balance due the United States of	2,718.24
	$5,000.00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $2,718\frac{24}{100}$ due to U. S. this 17th day of March, 1884.

J. TARBELL,
Acting Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

79 [Appropriation on account of International Commission for the Establishment of Electrical Units.]

ACCOUNT CURRENT FOR THE QUARTER ENDING DECEMBER 31ST, 1883.

The United States in account with Robert C. Morgan, Disbursing Clerk, &c.

DR.					CR.
1883.			1883.		
	To amount due Robert C. Morgan, per last account			By balance due the United States, per last account	
Dec. 31.	To payments made on account of appropriation for the quarter ending December 31st, 1883, per abstract and vouchers herewith	$2,281.76	Oct. 5	By requisition on the Treasurer, No. 3424	$5,000.00
Dec. 31.	To amount due United States	2,718.24		By balance due from the United States	
		$5,000.00			$5,000.00

Approved:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *December 31st*, 1883.
R. C. MORGAN,
Disbursing Clerk, &c.
Per his successor in office.
F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller.

F. J. KIECKHOEFER.

80 No. 100850. (Form 13.)

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
April 14th, 1884.

Recorded——.

I hereby certify that I have examined and adjusted an account between the United States and R. C. Morgan, late disbursing clerk, Department

of State, on account of International Commission for the Establishment of Electrical Units, for the period extending from January 1st, 1884, to January 26th, 1884, for 188–, and find that he is chargeable, viz:

To balance due from him, per Report No. 100417	$2,718.24
Warrants on the Treasurer, viz.:	
No. ——, dated ———, 188–.	
	$2,718.24

I also find that he is entitled to credit—

By amount of his disbursements ——, 188-	$1,705.23
By warrant in favor of the Treasurer, viz:	
No. ——, dated ———, 188–.	
Balance due the United States of	1,013.01
	$2,718.24

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,
Fifth Auditor.
A. O. L.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance $1,013.01 due to U. S. this 21st day of April, 1884.

WM. LAWRENCE,
Comptroller.
J. TARBELL,
By Deputy Comptroller.
J. R. G.

To the REGISTER OF THE TREASURY.

81 Appropriation on account of international commission for the establishment of electrical units.

ACCOUNT-CURENT FOR THE FRACTIONAL QUARTER ENDING JANUARY 26TH, 1884.

The United States in account with Robert C. Morgan, disbursing clerk, &c.

DR.					CR.
1884.			1883.		
	To amount due Robert C. Morgan, per last account		Dec. 31.	By balance due the United States, per last account	$2,718.24
Jan. 26.	To payments made on account of appropriation for the fractional quarter ending January 26th, 1884, per abstract and vouchers herewith	$1,705.23		By requisition on the Treasurer, No.	
" "	To amount due United States	1,013.01		By balance due from the United States	
		$2,718.24			$2,718.24

Approved:
FRED'K T. FRELINGHUYSEN,
Secretary of State.

DEPARTMENT OF STATE, *January 26th*, 1884.
R. C. MORGAN, *Disbursing Clerk, &c.*
Per his successor in office, F. J. KIECKHOEFER.

This account is rendered by me without responsibility in pursuance of authority given by First Comptroller of the Treasury.

F. J. KIECKHOEFER.

82 U. S. district court, S. D. N. Y.

Plaintiff's Exhibit 2.

[James H. Fisk, Stenographer. Office of the Register of the Treasury. Form 1 *a*.]

Transcript certificate.

Treasury Department, Register's Office,
Washington, D. C., Feby. 2d, 1886.

Pursuant to section 886 of the Revised Statutes of the United States I, W. S. Rosecrans, Register of the Treasury Department, do hereby certify that the annexed is a transcript from the books and proceedings of the Treasury Department, and true copies of the originals on file in the case of R. C. Morgan, late disbursing clerk, Department of State.

W. S. Rosecrans,
Register.

A. H.

Be it remembered, that W. S. Rosecrans, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, C. S. Fairchild, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this 2d day of February, in the year of our Lord 1886.

[seal.] C. S. Fairchild,
Acting Secretary of the Treasury.

83 Draft No. B. 12240 on diplomatic warrant No. 2509.

$ K. H.] Treasury of the United States,
Washington, D. C., Oct. 9th, 1883.

Pay to the order of asst. treas. U. S., New York, for credit of R. C. Morgan, disb'g clerk, five thousand dollars.

A. U. Wyman,
Treasurer of the United States.

No........ Registered: Oct. 9th, 1883, $5,000.

W. P. Titcomb,
Acting Register of the Treasury.

To Asst. Treas. U. S., *New York.*

Paid Oct. 10th, 1883, New York.

(Endorsed:) "Assistant treasurer U. S., Oct. 10, 1883. Account credited New York, Oct. 10, 1883. J. M. Floyd, Acting U. S. Treasurer.

84 TREASURY DEPARTMENT.

Office of the Secretary of the Treasury.
Division of Warrants, Estimates, and Appropriations.
Form 27.

[Diplomatic cut.]

To the Treasurer of the United States, greeting:

Pay to assistant treasurer U. S., New York, for credit of R. C. Morgan, disb'g clerk, Dept. of State, or order, to be charged to the appropriations named in the margin, five thousand dollars, on account of his expenditures, and for which he, R. C. Morgan, is to be charged and held accountable. For so doing this shall be your warrant.

Accountable
Warrant.
No. 2509.
$5,000.00

APPROPRIATIONS.

Salaries of ministers	
Salaries, secretaries of legation	
Salaries, consular service	
Salaries, consular officers, not citizens	
Salaries, marshals for consular courts	
Salaries, interpreters to consulates in China, &c	
Contingent expenses of foreign missions	
Contingent expenses of U. S. consulates	
Relief and protection of American seamen	
Expenses of interpreters, guards, &c., in Turkish Dominions	
Expenses of prison for American convicts	
Allowance for consular clerks.	
International Comsn. for Establishment of Electrical Units	$5,000.00

Treasurer's Office,
Division of Accounts,
Oct. 9, 1883.
10 A. M.
K. K.
W.

Given under my hand and the seal of the Treasury Department this 8th day of October, [SEAL.] in the year of our Lord one thousand eight hundred and eighty-three, and of Independence the one hundred and eight. (C. H. M.)

Folger,
Secretary.
T.

S. B.

Countersigned: 9.
J. Tarbell,
Acting First Comptroller.

Registered: 9.
W. P. Titcomb,
Acting Register.

Office of the
9. Treasurer of the United States.

Received for this warrant the following draft:
No. 12240 on New York.
No...... on ....
Mailed Oct. 9th, 1883.
K.

85 Warrant 2509.

Secretary Treasury.
2509.
Oct. 8, 1883.
Warrant Division.

To the SECRETARY OF THE TREASURY:

No. 3424.] DEPARTMENT OF STATE,
Washington, October 5th, 1883.

SIR: Please cause a warrant for five thousand dollars to be issued in favor of the assistant treasurer of the United States at New York, to be by him placed to the credit and subject to the draft of R. C. Morgan, disbursing clerk of this Department, payable out of the under-named appropriation:

"International commission for the establishment of electrical units."

(Sundry civil act, March 3, 1883.)

Comptroller's Office.
Oct. 6, 1883.
Diplomatic and
Consular Division.

the said R. C. Morgan to be charged accordingly on the books of the Treasury.

$5,000.

JOHN DAVIS,
Acting Secretary of State.

86 Draft No. B. 12489 on diplomatic warrant No. 2762.

$ K. H.] TREASURY OF THE UNITED STATES,
Washington, D. C., Nov. 20th, 1883.

Pay to the order of R. C. Morgan, disb'g clerk, five thousand dollars.

A. U. WYMAN,
Treasurer of the United States.

No. Registered: Nov. 20th, 1883, $5,000.

B. K. BRUCE,
Register of the Treasury.

To TREASURER U. S.,
Washington, D. C.

Paid by Treasurer U. S., Nov. 21st, 1883.

Endorsed: "To be deposited to my credit, R. C. Morgan, disb'g clerk, C. D., 28203 pt. E. O. Graves, Ass't Tres. U. S."

87 TREASURY DEPARTMENT.

OFFICE OF THE REGISTER OF THE TREASURY,
Division of Warrants, Estimates and Appropriations.
Form 27.

[Diplomatic cut].

To the Treasurer of the United States, Greeting:

Pay to R. C. Morgan, disb'g clerk, Dept. of State, or order, to be charged to the appropriations named in the margin, five thousand dollars, on account of his expenditures, and for which he is to be charged and held accountable. For so doing this shall be your warrant.

Accountable
Warrant
No. 2762.
$5,000.

APPROPRIATIONS.

Salaries of ministers	
Salaries, secretaries of legation.	
Salaries, consular service	
Salaries, consular officers not citizens	
Salaries, marshals for consular courts	
Salaries, interpreters to consulates in China, &c	
'84. Contingent expenses of foreign missions	5,000.00
Contingent expenses of U. S. consulates	
Relief and protection of American seamen	
Expenses of interpreters, guards, &c., in Turkish Dominions	
Expenses of prison for American convicts	
Allowance for consular clerks.	

Treasurer's Office,
Division of Accounts.
Nov. 19, 1883.
2 P. M.
K. H.
W.

[SEAL.] Given under my hand and the seal of the Treasury Department this 17th day of November, in the year of our Lord one thousand eight hundred and eighty-three, and of Independence the one hundred and eighth.

(W. T. McL.)

FOLGER,
Secretary.
F.

S. B.

COUNTERSIGNED: 19
W. LAWRENCE,
First Comptroller.

REGISTERED: 19.
B. K. BRUCE,
Register.
L.

Office of the
20. TREASURER OF THE UNITED STATES

Received for this warrant the following draft:
No. 12489 on Treasurer.
No. on

HENRY FREEMAN.
Nov. 21.

88 Warrant 2762.

Secretary Treasury.
2762.
Nov. 17, 1883.
Warrant Division.

To the SECRETARY OF THE TREASURY:

No. 3512.]

DEPARTMENT OF STATE,
Washington, Nov. 12th, 1883.

SIR: Please cause a warrant for five thousand dollars to be issued in favor of R. C. Morgan, disbursing clerk of this Department, payable out of the under-named appropriation:

"Contingent expenses foreign missions, 1884," the said R. C. Morgan to be charged accordingly on the books of the Treasury.

$5,000.

FREDK. T. FRELINGHUYSEN,
Secretary of State.

Draft No. B. 12789 on diplomatic warrant No. 7.

K. H. TREASURY OF THE UNITED STATES,
Washington, D. C., Jan. 7th, 1884.

Pay to the order of R. C. Morgan, disb'g clerk, five thousand dollars.

A. U. WYMAN,
Treasurer of the United States.

No. Registered: Jan'y 7th, 1884, $5,000.

W. P. TITCOMB,
Asst. Register of the Treasury.

To TREASURER U. S.,
Washington, D. C.:

Paid by Treasurer U. S., Jan. 9th, 1884.

Endorsed: "To be deposited to my credit, R. C. Morgan, disb'g clerk. Agency, C. D., 28497. E. O. Graves, Ass't T., U. S. J. P.

89 TREASURY DEPARTMENT.

OFFICE OF THE SECRETARY OF THE TREASURY,
Division of Warrants, Estimates, and Appropriations,
Form 27.

[Diplomatic cut.]

To the Treasurer of the United States, greeting:

Pay to R. C. Morgan, disb'g clerk, Dept. of State, or order, to be charged to the appropriations named in the margin, five thousand dollars, on account of his expenditures, and for which he is to be charged and held accountable. For so doing this shall be your warrant.

Accountable
Warrant
No. 7.
$5,000.

APPROPRIATIONS.

Salaries of ministers	
Salaries, secretaries of legation	
Salaries, consular service	
Salaries, consular officers not citizens	
Salaries, marshals for consular courts	
Salaries, interpreters to consulates in China, &c	
'84. Contingent expenses of foreign missions	5,000.00
Contingent expenses of U. S. consulates	
Relief and protection of American seamen	
Expenses of interpreters, guards, &c., in Turkish Dominions	
Expenses of prison for American convicts	
Allowance for consular clerks	

Treasurer's Office,
Division of Accounts,
Jan. 7, 1884,
3 p. m.

K. K.
F.

[SEAL.] Given under my hand and the seal of the Treasury Department this 3d day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of Independence the one hundred and eighth.

(W. T. McL.)

FOLGER,
Secretary.
L.

S. B. 4.

COUNTERSIGNED:

WM. LAWRENCE,
First Comptroller.

REGISTERED: 7.

W. P. TITCOMB,
Assistant Register.
L.

Office of the
7. TREASURER OF THE UNITED STATES.

Received for this warrant the following draft:
No. 12789 on Treasurer.
No...... on ....

HENRY FREMAN.
1/8

90 **Warrant 7.**

Secretary Treasury.
7.
January 3, 1884.
Warrant Division.

To the SECRETARY OF THE TREASURY.

No. 3585.] DEPARTMENT OF STATE,
Washington, January 2d, 1884.

SIR: Please cause a warrant for five thousand dollars to be issued in favor of R. C. Morgan, disbursing clerk of this Department, payable out of the undernamed appropriation:

"Contingent Expenses Foreign Missions, 1884."

Comptroller's Office.
Jan. 3, 1884.
Diplomatic and
Consular Division.

the said R. C. Morgan to be charged accordingly on the books of the Treasury.

$5,000.00.

FREDK. T. FRELINGHUYSEN,
Secretary of State.

JOHN WALKER, being duly sworn, testified in behalf of the plaintiff:

That he was a clerk in the First Comptroller's Office in the Treasury Department, having charge of the settlement of consular and diplomatic accounts, and being shown Plaintiff's Exhibits Nos. 1 and 2, further testified: that plaintiff's exhibits show that there was due the United States from Mr. Morgan as disbursing clerk under the appropriation for contingent expenses for foreign missions for the year 1881 the sum of $16.25; for contingent expenses for foreign missions for the year 1882, $799.36;
for contingent expenses for foreign missions for the year 1884,
91 $6,307.09; under the appropriation for contingent expenses of
consulates for the year 1882, $176.92; for the year 1883, $3,656.02: under the appropriation for bringing home criminals for the year 1883, $732.32; under the appropriation for expenses under the neutrality act of 1883, $3,875.70; under the appropriation of the expenses of the International Fishery Exhibition of 1883, at London, $285.93; under the appropriation of the National Commission for the Establishment of Electrical Units, $1,013.08; which items made a debt of $16,860.67.

Being cross-examined by the counsel for the defendant, the witness further testified that plaintiff's exhibits were prepared in the Register's office from all the papers, accounts, and settlements in the "files" room in the Office of the Register of the Treasury.

That the disbursing officer obtains the money, for which he is charged by means of a requisition made by the Secretary of State, upon which a warrant is drawn by the Secretary of Treasury; that a check is issued upon the warrant, directed to the Treasurer or Assistant Treasurer, to pay to the disbursing clerk the amount thereof. The disbursing clerk usually takes the check and endorses on the back "To be placed to the credit of my deposit account." That he did not know where Mr. Morgan kept his disbursing account, but that from an examination of plaintiff's Exhibits Nos. 1 and 2, it appeared that he had an account with the Treasurer of the United States and the Assistant Treasurer at New York City. That upon the receipt of the money by the disbursing clerk it is his duty to deposit the same with the Treasurer of the United States at Washington, or one of the assistant treasurers of the United States. After drawing the money and having it deposited to his credit, either with the Treasurer or some assistant treasurer, he renders an account charging him- 92 self and crediting the United States with the money he has received, debits the United States with the payments made out of that money as shown by his papers and vouchers; the law requires him to render separate and distinct accounts under each appropriation. The accounting officer in the settlement of his accounts charges him with the warrants issued in his favor; they credit him with all payments shown by the vouchers, and find him indebted to the United States for the balance, the difference between the credits and the receipts.

In the account he renders he shows the balance due the United States.

If at the time of a final settlement he had not disbursed the money appropriated, the accounting officer would write to him in effect as follows: This settlement shows a balance due to the United States; if there are any vouchers, you will please forward them; otherwise draw your check as disbursing officer in favor of the Treasurer of the United States, and pay this balance into the Treasury to the credit of the proper appropriation out of which it is drawn.

Upon redirect examination the witness further testified that it appeared that Mr. Morgan had died in January, 1884, and that subsequent to his death it was ascertained that he had to his credit as disbursing clerk of the Department of State with the Treasurer of the United States at Washington the sum of $490.76, and with the assistant treasurer at New York the sum of $8,275.07, which sums were credited to him by the accounting officers of the Treasury Department in his accounts as disbursing clerk of the State Department.

The plaintiff, further to sustain the issues on its part, here offered in evidence the official bond of Robert C. Morgan, as disbursing clerk of the Department of State, which, being admitted, was marked Plaintiff's Exhibit No. 3.

93 U. S. district court, S. D. N. Y.

PLAINTIFF'S EXHIBIT 3.

[James H. Fish, stenographer. Office of the Register of the Treasury.—Form 1.]

Transcript certificate.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
Washington, D. C., July 28th, 1884.

Pursuant to section 886 of the Revised Statutes of the United States, I, B. K. Bruce, Register of the Treasury Department, do hereby certify that the annexed is a true copy of the original official bond of Robert C. Morgan, deceased, late disbursing clerk of the Department of State, on file in the Treasury Department.

B. K. BRUCE,
Register.
C. T. N.

Be it remembered, that B. K. Bruce, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Chas. E. Coon, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this 28th day of July, in the year of our Lord 1884.

[SEAL.] CHAS. E. COON,
Acting Secretary of the Treasury.

94 Know all men by these presents:

That we, Robert C. Morgan, of the city of Yonkers, county of Westchester, and State of New York, as principal, and Albert R. Bass, of 513 Vanderbilt avenue, Brooklyn, N. Y., Chas. E. Whitehead, of 61 Wall street, N. Y., Horace M. Ruggles, of 110 Lexington avenue, N. Y., as sureties, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars ($20,000), lawful money, to be paid to the said United States, for which payment well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, and each of them firmly by these presents.

Signed with our hands and sealed with our seals, and dated this twelfth day of May, in the year of our Lord one thousand eight hundred and seventy-five.

The condition of this obligation is such that, whereas, the said Robert C. Morgan, Chief of the Bureau of Accounts of the Department of State, has been appointed by the Secretary of State in accordance with the provisions of an act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes, approved March 3d, 1875, disbursing clerk of the Department of State, to make disbursements and perform other duties, and give bond as required by law.

Now, therefore, if the said Robert C. Morgan shall faithfully discharge the duties of such disbursing clerk according to law, then this obligation to be void, otherwise to be and remain in full force and virtue.

R. C. MORGAN. [L. S.]
ALBERT R. BASS. [L. S.]

Witness to R. C. Morgan and A. R. Bass,
ROBT. PRINCE.

CHAS. E. WHITEHEAD. [L. S.]

Witness to C. E. Whitehead,
HALIBURTON PALIS.

H. M. RUGGLES. [L. S.]

Witness as to H. M. Ruggles,
GEORGE W. BROWNE.

95 OFFICE U. S. ATTORNEY, SOUTHERN DISTRICT N. Y.,
New York, May 12th, 1875.

I, George Bliss, U. S. attorney for the southern district of New York, certify that Albert R. Bass, Charles E. Whitehead and Horace M. Ruggles, the sureties to the foregoing bonds, are residents, the said Bass of Brooklyn, and the said Whitehead and Ruggles of New York City respectively, are citizens of the United States, and good and sufficient sureties for the penalty of said bond.

GEORGE BLISS,
U. S. Atty.

NEW YORK, *May 12th,* 1875.

R. C. MORGAN, Disbg. Clerk.

Bond of R. C. Morgan examined and found correct, May 20th, 1875.

J. H. ROBINSON,
Acting Solicitor of the Treasury.

R. E. May 24th, 1875.

TREASURY DEPT., *May 17th,* 1875.

Respectfully referred to the Hon. Solicitor of the Treasury (Dept. of Justice) for examination.

CHAS. F. CONANT,
Ass't Sec'y.

Penalty approved.

B. H. BRISTOW,
Secretary of Treasury.

MAY 21ST, 1875.

The defendant thereupon admitted that on August 11th, 1884, a demand was made upon him by the United States for the payment of the amount shown and claimed to be due the plaintiff from Robert C. Morgan as disbursing clerk of the Department of State, and that, if
96 any amount was found due, interest thereon should be added from that time.

The testimony in chief for the plaintiff was then closed.

Counsel for defendant then moved the court to direct a verdict in favor of the defendant on the ground:

First.—That there is no proof of a demand on the principal or his representatives, and until that is made there can be no recovery against the surety.

Second.—That there is no proof that the Government has lost any money or that all the money received by Morgan is not in the Treasury.

To maintain the issues on his part, the defendant offered to read the deposition of F. J. Kieckhoefer, a witness sworn and examined at the city of Washington on behalf of the defendant.

Plaintiff's counsel objected to the reading of the deposition on the grounds:

1. That the evidence contained in the deposition of said deposing witness was immaterial, irrelevant, and incompetent.

2. That the defendant's pleading did not contain an averment warranting the taking or admission of the evidence contained in the deposition of the deposing witness.

The court ruled that the defendant might read the deposition.

To this ruling plaintiff's counsel then and there duly excepted.

Defendant's counsel then read the deposition of F. J. Kieckhoefer.

97 United States District Court, Southern District of New York.

UNITED STATES
vs.
ROBERT C. MORGAN, HORACE M.
Ruggles, *et al.*

It is consented to by both parties, plaintiff and defendant, that this deposition may be taken by a stenographer and reduced to writing and signed by the witness and be read in evidence with the same force and effect as if taken down in his own proper handwriting by the witness himself.

Deposition of F. J. Kieckhoefer, a witness produced and sworn on the part of the defendants pursuant to notice, taken before me, John J. Chew, a notary public in and for the city of Washington, in the District of Columbia, at the Bureau of Accounts, at the State Department in said city, the 11th and 12th days of May, 1886.

Present Mr. G. E. P. Howard, assistant United States district attorney for the southern district of New York, of counsel for plaintiff, and Mr. Thomas W. Osborn, of counsel for defendants.

F. J. Kieckhoefer, being by me duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

98 My name is F. J. Kieckhoefer; I reside in the city of Washington; I am at present chief of the Bureau of Accounts in the Department of State, and also disbursing clerk in the said Department; I knew Robert C. Morgan, named in the caption of this suit; he was my predecessor in both of said offices; he departed this life on the 27th of January, 1884; I knew him continuously from the time he first became chief of the Bureau of Accounts in the Department of State, in August, 1874; he was commissioned chief of the Bureau of Accounts of the Department of State and disbursing agent for the new State Department building on August 15th, 1874; he took the oaths of office as such chief of bureau and disbursing agent on the 17th day of August, 1874; he gave a bond as disbursing clerk of the Department of State on the 12th day of May, 1875; the first requisition made in his favor as such disbursing clerk in the Department of State was dated June 1st, 1875; during the whole of the period from August 15th, 1874, up to the present date, I have been employed in the Department of State; I find in the custody of the Department of State sundry books of account and vouchers kept and received by said Robert C. Morgan, and I now produce them for identification, to wit: No. 1, Trust Fund Ledger No. 1; the same marked for identification "Defendants' Exhibit Kieckhoefer No. 1, May 11, 1886;" No. 2, Trust Fund Ledger No. 2; the same marked for identification "Defendants' Exhibit Kieckhoefer No. 2;" No. 3, pass book, treasurer, &c., in account with R. C. Morgan &c., No. 1; the same marked for identifica-

tion "Defendants' Exhibit Kieckhoefer No. 3; "a similar pass book, marked "Defendants' Exhibit Kieckhoefer No. 4;" also five books containing the stubs of checks drawn by said Morgan as such disbursing clerk; the same are marked respectively, "Defendants' Exhibits Kieckhoefer Nos. 5, 6, 7, 8, and 9;" also ten parcels of vouchers purport-
99 ing to have been received by said Morgan from the Treasurer of
the United States for payments made by said Morgan to the Treasurer upon account of passport funds for the years 1875 to 1884 inclusive; the same are marked "Defendants' Exhibit Kieckhoefer Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19."

Cross-examination:

Q. How long have you been in the Department of State?

A. Since August 4th, 1874.

Q. Continuously?

A. Yes, sir.

Q. What positions have you occupied?

A. I have been a clerk in the bureau of indexes and archives at various salaries ranging from $900 to $1,800; I was promoted to the vacancy which occurred by the death of Col. Morgan in the position of chief of the bureau of accounts and disbursing clerk.

Q. Do you occupy the position of chief of the bureau of accounts and disbursing clerk at the present time?

A. I do, and have occupied such position since the death of Col. Morgan—continuously since the 1st of February, 1884.

Q. Do you know what Col. Morgan's duties were as disbursing clerk of the Department of State?

A. I have no means of knowing except through the description published in the Register of the Department of State, and this can be my only means of personal knowledge on the subject of Col. Morgan's duties, because during Col. Morgan's tenure of office my position in the Department was a subordinate clerical one, and hence no authoritative information was, or was likely to have been, communicated to me regarding the entire duties of my superior officer.

Q. As disbursing clerk of the Department of State you receive and disburse all moneys coming to the Department?

A. I receive and disburse all the moneys appropriated by Congress for the Department of State, and also disburse certain portions of the
100 money appropriated by law for the diplomatic and consular serv-
ice, and also certain portions of the money appropriated for miscellaneous objects not belonging to the Department proper, but which are under the control of the Secretary of State; I also disburse to a large extent moneys received as indemnities to United States citizens from foreign governments.

Q. What moneys do you receive?

A. I receive all moneys which the Secretary of State deems needful from the appropriations of Congress to meet expenses in the Department of State and provided for by law; I also receive moneys obtained from foreign governments as indemnities to United States citizens; I also receive moneys derived from the sale of laws, and I also receive for safekeeping such moneys as are collected by the passport clerk as fees for passports; in regard to international indemnities above referred to, I will state, however, that not all of these moneys are on deposit to my personal or official credit; certain of these indemnities are on deposit to the credit of the Secretary of State alone.

(The witness is shown a paper purporting to be general instructions in regard to passports issued by the Secretary of State, under date of September 1st, 1875.)

Q. Do you recognize that paper as having been the regulations of this Department from the time which it bears date?

A. I do not recognize this paper as a regulation for the government of the Department, but instructions to be observed by persons applying for passports; I think that is the object of this paper, the custom being to issue such papers in answer to applications for passports.

Q. By whose authority?

A. By the authority of the Secretary of State, who alone has authority to issue passports to American citizens in this country.

Q. Do you receive checks from individuals payable to the disbursing clerk of the Department of State in payment for passport fees?

101 A. In answer I desire to refer to the answer made above to the question as to what moneys I receive, and would state that the moneys which are given to me for safe-keeping as products of passport fees include checks, postal-notes and postal money orders, and in most cases these checks and money orders are made payable to my order as disbursing clerk of the Department of State.

(The instructions referred to by the witness is now marked for identification Plaintiff's Exhibit, No. 1, May 11th, 1886.)

Redirect examination:

Q. Has the Secretary of State, in accordance with the provisions of the act of Congress of June 20th, 1874, chap. 328, ever prescribed as part of your duty the duty of collecting, accounting for, and turning over the moneys received in his office upon the sale of passports?

A. No such prescription has ever been made to me individually; whether any such prescription has been made for the office of the disbursing clerk of the Department, irrespective of the individual holding it, I am not aware; I have not found, and individually have not regarded, such prescription as existing; but this statement of mine is not to be considered as a denial of its existence.

(Plaintiff's counsel objects to so much of the witness's answers as are conclusions or opinions of his own.)

Q. Please state what was done by you upon the death of Col. Morgan with regard to the settlement of his accounts, turning over of vouchers and cash found in his possession, and upon whose directions or request you acted?

A. Upon my assumption of my present office I was advised by the First Comptroller of the Treasury, in order to avoid any complication in my accounts, not to accept any balances which might be found in Col. Morgan's hands, but to begin entirely de novo: I did not open 102 Col. Morgan's safe; it was opened by the Assistant Secretary of State, the chief clerk of the Department of State, and James Taggart, one of the clerks who had served under Col. Morgan for

several years, and was more or less familiar with his affairs as disbursing officer; the contents of the safe were carefully examined by these three gentlemen in the presence of a Mr. Wood, who is step-brother of Col. Morgan's widow, and was present as representative of Col. Morgan's interests, and in the presence of others, including myself. I have no personal knowledge of the amount of money found in his safe or other places of safe-keeping; whatever sum was found in the Department belonging to Col. Morgan was counted before the gentlemen above named; there was evidence that out of whatever funds should be found the sum of one thousand and ninety dollars, and the sum of one hundred and eighty-nine dollars belonged to the Government as the product of passport fees and the sale of laws, respectively; as custodian of the Government property, and by virtue of the Comptroller's authorization to me in the matter of closing Col. Morgan's accounts, to be hereinafter referred to, I retained these two sums from the moneys found, and transmitted them with covering letters to the Treasurer of the United States on 12th February, 1884, for deposit to the credit of the United States under the respective heads of passport fees and proceeds of sales of laws; whatever balance remained of the moneys found after the above deductions was taken to the Treasurer of the United States by Mr. Young and Mr. Taggart, of the bureau of accounts of the Department of State, and the Mr. Wood above referred to, and given into the hands of the assistant cashier of the Treasury of the United States, and it would appear from the receipt of the assistant treasurer of the United States, dated February 12th, 1884, that the amount of this balance, which was deposited to Col. Morgan's
103 credit by the gentlemen above named, was ($5,873.83) five thousand eight hundred and seventy-three dollars and eighty-three cents; the vouchers which were found in Col. Morgan's safe were placed to his credit in a series of accounts rendered in his name through my procuration, which procuration was authorized by the First Comptroller of the Treasury, and this authority was granted me because Col. Morgan, having left no estate which warranted taking out letters of administration, and it being necessary to have these vouchers passed to his credit in regular form, no one was deemed more available than myself, being a bonded officer and Col. Morgan's immediate successor, to perform that that duty.

Recross-examination:

Q. You spoke on your redirect examination in relation to an order or direction issued by the Secretary of State, requiring you as disbursing clerk to receive and account for passport fees; now state whether or not, when you assumed such office, you did not find the fact to be that your predecessor in the position of disbursing clerk had received and paid into the Treasury fees for passports.

A. I found that my predecessor received passport fees, and deposited the same in the Treasury of the United States.

Q. Have you any knowledge of your predecessor's making such deposits with the Treasurer otherwise than by drafts upon the Treasury, with instructions to credit him therewith?

A. I discovered that my predecessor had from time to time received moneys as fees for passports, and was in the habit of writing at short in-

tervals, apparently from month to month, a letter to the Treasurer, stating that a certain amount had been received from the sale of passports in the past month, and calling the attention of the Treasurer to a check or draft for that amount, and requesting that the avails be covered
104 into the Treasury; this I discovered from an examination of the records of my office as disbursing clerk of the Department of State; on February 11th, 1885, the Secretary of State deposited with the Treasurer of the United States, to the credit of the United States, the sum of $1,505 on account of passport fees for January, 1885, and received therefor a certificate of deposit from the Assistant Treasurer; from that time to the present all passport funds collected in the Department of State, and covered into the Treasury, were deposited in like manner by the Secretary of State, and similar vouchers for such deposits were given to him.

Q. Prior to February 11th, 1885, what was your custom in relation to the deposit of fees for passports?

A. My custom was to draw checks against my account as disbursing clerk of the Department of State and deposit such checks with the Treasurer of the United States, on account of fees received from passports, to the credit of the Government.

Q. Why did you draw a check against your account as disbursing clerk of the Department of State to pay for moneys due the Government on account of passport fees which had been received by you?

A. It was the simplest way, I thought, of effecting the transaction; instead of drawing money on my disbursing account from the Treasury from time to time as the necessities of the Department might require, I utilized, on account of the Department, the moneys which were collected as passport fees; otherwise I would have had to draw this money from my disbursing account, and instead of drawing several checks at various times and keeping a large pile of soiled money on hand, and not turning it into the Treasury until the end of the month, it seemed to me the safest and most expeditious way to utilize the money on hand derived from passport fees and then to make one check at the end of the month to replace the money so used.

105 Q. So that as a matter of fact you drew drafts against your account as disbursing clerk and accounted for such withdrawals of moneys by vouchers which you had obtained from time to time by the use of moneys in your hands received from passport fees?

A. Yes, sir.

Redirect examination:

Q. To whose order were those checks drawn by you?

A. To the order of the Treasurer of the United States.

Q. Who was the same person upon whom they were drawn?

A. Yes, sir.

Q. What was the occasion of changing the method of making these payments of passport funds into the Treasury in February, 1885, when the Secretary of State turned over the funds and received vouchers therefore?

A. The direct motive for my changing the practice was a notification I received from the Fifth Auditor, to the effect that I would have to thereafter render an account for passport fees received and disbursed; fearing that sometimes there might be discrepancies, or at all events regarding this as an additional responsibility, which I did not see that I was compelled to assume, looking at the law as it stood, I replied to the Fifth Auditor that thereafter whenever I made any deposit of passport fees I would render an account, but took care never to deposit any thereafter; at the end of the month, during which I received the Fifth Auditor's letter, I prepared a letter for the Secretary of State to sign for the purpose of covering these fees into the Treasury in his own name; the new mode was then established and has since continued; prior to that time no accounts had been rendered for passport funds collected in the Department of State otherwise than by a letter written to the Treasurer accompanying the check or money for passports sent in such case of deposit—though 106 I have no knowledge just at present whether or not actual money was ever sent, except the deposit made by myself of passport fees found in Col. Morgan's safe above referred to—and explaining the purpose of the deposit.

F. J. KIECKHOEFER.

Witness:
F. B. YOUNG.

CITY AND COUNTY OF WASHINGTON,
District of Columbia, ss:

I, John J. Chew, a notary public in and for said District, do hereby certify: That F. J. Kieckhoefer, the witness who made the foregoing deposition before me this 11th and 12th days of May, A. D. 1886, and was by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; that his testimony was reduced to writing before me and subscribed by the said witness in my presence, at the State Department, in the city of Washington, in that District, on the fifteenth day of May, 1886.

Witness my hand and seal this fifteenth day of May, 1886.

[SEAL.] JOHN J. CHEW,
Notary Public.

I hereby certify that the erasures, interlineations, corrections occurring herein were made by me prior to the administration of the jurat.

JOHN J. CHEW,
Notary Public.

All the depositions taken at the city of Washington on the 11th and 12th days of May, 1886, pursuant to notice on the part of the defendant, Horace M. Ruggles, are taken subject to any and all objections as to 107 competency, relevancy, and materiality; such objections to be raised and passed upon at the trial.

It is admitted by the plaintiff that the defendants are not liable upon the bond in suit for Morgan's misappropriation of or failure to account for any moneys which he may have received for passports.

The defendant, further to maintain the issues on his part, offered to read the deposition of James Taggart, a witness sworn and examined at the city of Washington in behalf of the defendant.

Plaintiff's counsel objected to the reading of the deposition on the grounds:

1. That the evidence contained in the deposition of said deposing witness was immaterial, irrelevant, and incompetent.

2. That the defendant's pleading did not contain an averment warranting the taking or admission of the evidence contained in the deposition of the deposing witness.

The court ruled that the defendant might read the deposition.

To this ruling plaintiff's counsel then and there duly excepted.

Defendant's counsel then read the deposition of James Taggart.

108 United States district court, southern district of New York.

United States
vs.
Robert G. Morgan, Horace M. Ruggles, *et al.*

It is consented to by both parties, plaintiff and defendant, that this deposition may be taken by a stenographer and reduced to writing and signed by the witness, and be read in evidence with the same force and effect as if taken down in his own proper handwriting by the witness himself.

Deposition of James Taggart, a witness produced and sworn on the part of the defendants pursuant to a notice, taken before me, John J. Chew, a notary public in and for the city of Washington, in the District of Columbia, at the Bureau of Accounts at the Department of State in said city the 11th and 12th days of May, 1886.

Present: Mr. G. E. P. Howard, assistant United States district attorney for the southern district of New York, of counsel for plaintiff, and Mr. Thomas W. Osborn, of counsel for defendants.

James Taggart, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

My name is James Taggart; I reside in the city of Washington temporarily; I am a clerk in the Bureau of Accounts of the
109 Department of State; I knew Robert C. Morgan from December, 1880,
to the time of his death; I was familiar with his handwriting, and also with the handwriting of William A. Van Duzer, who was also a clerk in this bureau; upon examination of the books marked "Defendants' Exhibit Kieckhoefer No. 1, May 11th, 1886," I find that the entries at pages 162 and 163, from June 28th, 1875, to September 30th, 1875, are in the handwriting of Mr. Morgan; that the remaining entries on said pages are in the handwriting of Mr. Van Duzer, as are also the entries on pages 164 and 165, as are also entries at pages 250 and 251; I have examined also "Defendants' Exhibit Kieckhoefer No. 2," and find that the entries at pages 204 and 205 down to April 30th, 1881, are in the handwriting of Mr. Van Duzer, and the subsequent entries on said pages, and also at pages 206 and 207, are in my handwriting; Mr. Van Duzer is not now to my knowledge within the District of Columbia; I was present at the opening, after Mr. Morgan's death, of the receptacles in which he preserved his vouchers and cash, and was present when the cash there found was handed to Mr. Whitney, assistant cashier, for deposit with the Treasurer of the United States.

Cross-examination:

Q. The books which you have referred to in your direct examination were the books kept by Mr. Morgan as disbursing clerk in the Department of State, were they not?

A. No, sir; they were trust funds, as I understand it. In further explanation of my statement above, I would say that the total amount of cash found in Mr. Morgan's safe after his death was $7,152.83; this was disposed of as follows:

$189 deposited to the credit of the sale of laws and statutes in the United States Treasury.

$1,090 to the credit of passport funds.

$5,873.83 repayment of disbursing funds;
110 which last sum was credited to the account of Mr. Morgan, as disbursing clerk, with the Treasurer of the United States.

Q. Why was not the entire sum in cash deposited to the credit of his accounts as disbursing clerk?

A. Because it appeared from the books kept by Morgan, and from the accounts kept by the passport clerk, that there was these different amounts due on these different accounts, and on consultation with Mr. Whitney, assistant cashier of the Treasury, it was thought better to settle up for the small objects, and the balance be deposited to the credit of the general fund or disbursing fund.

Q. Was there any memorandum found with the cash, stating from what source it had been received, or to what purpose it was applicable, or to what accounts it should be credited?

A. There was none.

Q. Then, for aught you know, this cash might have been received from the Treasury for disbursements pursuant to his duties as disbursing clerk, and not from the sale of passports or statutes?

A. I do know that some of it was received for the sale of laws and from passports, because I received the same as clerk under Mr. Morgan. How much I received I can not now say.

Q. Then the only guide you had in making a division of an appropriation of the moneys found in the safe after Mr. Morgan's death was the books of account kept by Mr. Morgan, showing the sale of laws and the accounts of the passport clerk of moneys turned over by him from the sale of passports to Mr. Morgan?

A. That's so.

JAMES TAGGART.

Witness:
F. B. YOUNG.

CITY AND COUNTY OF WASHINGTON,
District of Columbia, ss.:

I, John J. Chew, a notary public in and for said District, do
111 hereby certify that James Taggart, the witness who made the foregoing deposition before me the 11th and 12th days of May, A. D. 1886, and was by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; that his testimony

was reduced to writing before and subscribed by the said witness in my presence, at the Department of State, in the city of Washington, in that District, on the fifteenth day of May, 1886.

Witness my hand and seal this fifteenth day of May, 1886.

[SEAL.]
JOHN J. CHEW,
Notary Public.

I certify that the erasures, interlineations, and corrections occurring herein were made prior to the administration of the jurat.

JOHN J. CHEW,
Notary Public.

All the depositions taken at the city of Washington on the 11th and 12th days of May, 1886, pursuant to notice on the part of the defendant, Horace M. Ruggles, are taken subject to any and all objections as to competency, relevancy, and materiality; such objections to be raised and passed upon at the trial.

Defendant further to maintain the issues on his part, offered to read the deposition of J. R. Garrison, a witness sworn and examined at the city of Washington in behalf of the defendant.

Plaintiff's counsel objected to the reading of the deposition on the grounds:

1. That the evidence contained in the deposition of said deposing witness was immaterial, irrelevant, and incompetent.

2. That the defendant's pleading did not contain an averment
112 warranting the taking or admission of the evidence contained in
the deposition of the deposing witness.

The court ruled that the defendant might read the deposition.

To this ruling of the court plaintiff's counsel then and there duly excepted.

The defendant's counsel then read the deposition of J. R. Garrison.

United States district court, southern district of New York.

UNITED STATES
vs.
ROBERT C. MORGAN, HORACE M. RUGGLES, *et al.*

It is consented to by both parties, plaintiff and defendant, that this deposition may be taken by a stenographer and reduced to writing and signed by the witness and be read in evidence with the same force and effect as if taken down in his own proper handwriting by the witness himself.

Deposition of John R. Garrison, taken pursuant to notice on behalf of defendants before me, Webster Elmes, a notary public in and for the city of Washington, in the District of Columbia, at the Treasury Department in the said city of Washington, this 12th day of May, 1886.

Present: Mr. G. E. P. Howard, assistant United States district attorney for the southern district of New York, of counsel for plaintiff, and Mr. Thomas W. Osborn, of counsel for defendants.

113 JOHN R. GARRISON, being duly sworn, deposes and says:

That he is Deputy First Comptroller of the Treasury; that in 1874 he was chief of the foreign intercourse division in the office of the First Comptroller, and in that capacity he settled and adjusted the final accounts of R. C. Morgan above named, and under the direction of the First Comptroller he examined and prepared the original accounts and papers and requested the Register to make the proper transcript thereof for the purpose of this suit; that the balance which appears by said transcript to be due to the United States from said R. C. Morgan arises as follows:

In the settlement of his accounts said Morgan was charged with all public moneys advanced to him as disbursing clerk and paid from the respective appropriations on account of which he was required to make disbursements; these advances of public moneys were based on requisitions of the Secretary of State and made on warrants issued and signed by the Secretary of the Treasury and countersigned by the First Comptroller.

Against these charges said Morgan was credited, first, with all disbursements made by him for the purpose of the several appropriations from which he had received advances, as shown by the vouchers presented, including those found after his death; second, with the balances remaining on deposit after his death with the Treasurer of the United States at Washington and the assistant treasurer U. S. at New York to his credit as disbursing clerk of the Department of State; third, with certain moneys alleged to have been found in his safe, which were deposited in the Treasury to his credit as disbursing clerk subsequent to his death.

Where on final settlement a balance was found due from the United States to said Morgan, on any account, such balance was duly transferred to his credit on some account on which he stood indebted to the Government. 114

I am now testifying solely from the general course and practice of business; what credits were actually made I can not now state without examining the accounts in detail; what credits were made will clearly appear from the transcript of Mr. Morgan's account.

Cross-examination:

Q. You made the final settlement of R. C. Morgan's accounts as disbursing clerk of the State Department?

A. I settled the final accounts of R. C. Morgan, late disbursing clerk of the Department of State, which came under the appropriations relative to foreign intercourse.

Q. Did you give Mr. Morgan credit for every amount that he was entitled to according to the books, vouchers, and certificates which were presented with his accounts?

A. The transcripts of his accounts show fully what credits Mr. Morgan received, and the statements of differences thereon show any disallowances that were made; my recollection is that he received credit for all that he claimed excepting about two hundred dollars disallowed.

Redirect:

The balances on deposit with the Treasurer of the United States and the assistant treasurer at New York were ascertained by the official certificate of the Treasurer of the United States.

JOHN R. GARRISON.

CITY AND COUNTY OF WASHINGTON, *District of Columbia, ss:*

I, Webster Elmes, a notary public in and for said district, do hereby certify that John R. Garrison, the witness who subscribed the fore-
115 going deposition and produced before me this 12th day of May, A. D. 1886, and was by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; that his testimony was reduced to writing before me and subscribed by the said witness in my presence, at the Treasury Department, in the city of Washington, in that district, on the day aforesaid.

Witness my hand and seal this 12th day of May, 1886.

[SEAL.] WEBSTER ELMES,
Notary Public.

All the depositions taken at the city of Washington, on the 11th and 12th days of May, 1886, pursuant to notice on the part of the defendant, Horace M. Ruggles, are taken subject to any and all objections as to competency, relevancy, and materiality; such objections to be raised and passed upon at the trial.

The defendant, further to maintain the issues on his part, offered to read the deposition of H. A. Whitney, a witness sworn and examined at the city of Washington in behalf of the defendant.

Plaintiff's counsel objected to the reading of the deposition on the grounds:

1. That the evidence contained in the deposition of said deposing witness was immaterial, irrelevant, and incompetent.
2. That the defendant's pleading did not contain an averment warranting the taking or admission of the evidence contained in the deposition of the deposing witness.

The court ruled that the defendant might read the deposition.

To this ruling plaintiff's counsel then and there duly excepted.

Defendant's counsel then read the deposition of H. A. Whitney.

116 United States district court, southern district of New York.

UNITED STATES
vs.
ROBERT C. MORGAN, HORACE M. RUGGLES, *et al.*

It is consented to by both parties, plaintiffs and defendants, that this deposition may be taken by a stenographer and reduced to writing and signed by the witness, and be read in evidence with the same force and effect as if taken down in his own proper handwriting by the witness himself.

Deposition of H. A. Whitney, taken pursuant to notice on behalf of defendants before me, ——— ———, a notary public in and for the city of Washington, in the District of Columbia, at the Treasury in the said city of Washington, this twelfth day of May, 1886.

Present: Mr. G. E. P. Howard, Assistant United States attorney for the southern district of New York, of counsel for plaintiff, and Mr. Thomas W. Osborn, of counsel for defendants.

H. A. Whitney, being duly sworn, deposes and says:

He is cashier of the United States Treasury; that he resides in the city
of Washington; that he is familiar with the method of keeping the ac-
counts of disbursing clerks of the various Departments of the Gov-
117 ernment in the Treasurer's office; that from June, 1875, down
to his death, in 1884, the late Robert C. Morgan, disbursing clerk
in the Department of State, is credited with payment of as and
for moneys received by him for passports as per his statements accompanying his remittances; that all of the payments which appear to have been made by him into the Treasury were made as shown by the letters and drafts copies of which may be procured from the Department.

Q. Are you in charge of that department of the United States Treasurer's office in which credits are opened for Departments' disbursing officers?

A. Yes, sir.

Q. Is there an account in your department with one Robert C. Morgan?

A. There was an account with R. C. Morgan, but I am of the opinion that the same has been closed on the books of my department.

Q. That account was with Robert C. Morgan—or R. C. Morgan—as disbursing clerk of the Department of State, was it not?

A. The account stood in the name of R. C. Morgan as disbursing clerk of the Department of State.

Q. That account was opened by the receipt in your office or department of a draft or warrant from the Secretary of the Treasury, drawn to the order of the Treasurer of the United States, accompanied by instructions to place the amount of the draft to the credit of R. C. Morgan, disbursing clerk of the Department of State; is that not the fact?

A. Without looking into the records, my recollection of his accounts in
those earlier years is that they were the same as all other disbursing clerks,
and he endorsed the same over to the Treasurer of the United States for
deposit to his credit as disbursing clerk; this was so in the earlier years
of Mr. Morgan's incumbency as disbursing clerk of the Department of
State, but may have been modified during the last portion of his
118 term of office; but if the drafts were not drawn to his order of-
ficially, and by him endorsed to the Treasurer, and then deposited
to his credit as disbursing clerk, the drafts were drawn to the order of the Treasurer of the United States, accompanied by directions to credit the amount thereof to the account of R. C. Morgan, as disbursing clerk of the Department of State; I am unable now, without looking at the drafts, to state positively how many of those drafts, and during what period of time, they were drawn to the order of and endorsed by R. C. Morgan or Robert C. Morgan, as the case might be, disbursing clerk of the Department of State, but in either event the entire amount of such drafts, whether drawn to Morgan's order or to the order of the Treasurer of the United States, was credited on the books of the Treasurer to the credit of R. C. Morgan, disbursing clerk of the Department of State, where such credits remained subject solely and only to the check or draft of said R. C. Morgan, as disbursing clerk of the Department of State; the moneys so credited could be withdrawn by no other means, and by no other person, and did so remain until withdrawn by such draft.

H. A. Whitney.

CITY AND COUNTY OF WASHINGTON,
District of Columbia, ss:

I, Webster Elmes, a notary public in and for said District, do hereby certify that H. A. Whitney, the witness who subscribed the foregoing deposition and produced before me this twelfth day of May, A. D. 1886, and was by me carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; that his testimony was reduced to writing before me and subscribed by the said witness in
119 my presence at the Treasury Department in the city of Washington, in that District, on the day aforesaid.

Witness my hand and seal this twelfth day of May, 1886.

[SEAL.] WEBSTER ELMES,
Notary Public.

All the depositions taken at the city of Washington on the 11th and 12th days of May, 1886, pursuant to notice on the part of the defendant, Horace M. Ruggles, are taken subject to any and all objections as to competency, relevancy, and materiality, such objections to be raised and passed upon at the trial.

The defendant further to maintain the issues on his part offered to read the deposition of H. A. Whitney, taken on the 11th day of June, 1886.

Plaintiff's counsel objected to the reading of the deposition on the grounds:

1. That the evidence contained in the deposition of said deposing witness was immaterial, irrelevant, and incompetent.
2. That the defendant's pleading did not contain an averment warranting the taking or admission of the evidence contained in the deposition of the deposing witness.
3. The want of reasonable notice to the plaintiff of the taking thereof.

The court ruled that the defendant might read the deposition.

To this ruling counsel for the plaintiff then and there duly excepted.

Defendant's counsel then read the deposition of H. A. Whitney, taken June 11th, 1886.

120 United States district court for the southern district of New York.

UNITED STATES
vs.
ROBERT C. MORGAN, HORACE M. RUGGLES ET AL.

Deposition of H. A. Whitney, taken under the provisions of section 863 of the Revised Statutes of the United States on behalf of the defendant, H. M. Ruggles, pursuant to the annexed notice, at the office of the cashier of the Treasury of the United States, in the city of Washington, District of Columbia, before me, Webster Elmes, a notary public in and for said District, this eleventh day of June, A. D. 1886, at 11 o'clock a. m.

Present: Mr. T. W. Osborn, of counsel for the defendant. No one appearing for the plaintiff.

H. A. WHITNEY, being duly sworn and cautioned by me first before testifying, deposeth and saith:

That he is the cashier of the United States Treasury, and that he resides in the city of Washington, and is the same person who made a deposition in this cause on the 12th day of May, 1886; that since said date certified copies have been prepared of certain checks drawn by R. C. Morgan, as disbursing clerk, which copies are now here present marked "For identification U. S. *vs.* Morgan, defts.' Exhibit Whitney, June 11th, 1886.—W. E.;" the said Robert C. Morgan kept but one account 121 with the Treasurer of the United States, and that was his account as disbursing clerk; upon this account he was credited from time to time with advances made from appropriations made for the Department of State, which advances were made on requisitions of the Secretary of State, said advances being placed to the credit of the said Robert C. Morgan as disbursing clerk; he was charged in that account with the amounts respectively of his several checks as they were presented, certified copies of which are contained in the exhibit marked "For identification U. S. *vs.* Morgan, defts.' Exhibit Whitney, June 11th, 1886—W. E."

Upon the settlement of the said account of the said Morgan after his death, the balance of said account was ascertained by deducting from all the credits he had received as aforesaid all the charges against him, including the said checks; this balance, which was in favor of said Morgan, was stated and certified to the Secretary of the Treasury in the usual course of business.

H. A. WHITNEY.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

I, Webster Elmes, a notary public in and for said District, do hereby certify that H. A. Whitney, the witness whose name is subscribed to the foregoing deposition, was produced before me this eleventh (11th) day of June, A. D. 1886, at eleven o'clock, a. m., and was by me first before testifying carefully examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth; that his testimony was reduced to writing by me in his presence, and was subscribed as aforesaid by him in my presence, and was taken at the office of the cashier of the Treasury of the United States, in the city of Washington, in said District, 122 at the time before stated, and of the day aforesaid, pursuant to the notice hereto annexed, and for the reason that the said witness resides at a greater distance than one hundred miles from the place of the trial of the suit mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, in the District aforesaid.

[SEAL.] WEBSTER ELMES,
Notary Public.

The defendant, further to maintain the issues on his part, offered in evidence certain checks drawn by Robert C. Morgan as disbursing clerk of the Department of State, which checks were referred to in the depositions of H. A. Whitney.

Plaintiff's counsel objected to the admission of the checks in evidence on the grounds:

1. That the said checks were immaterial, irrelevant, and incompetent.
2. That the defendant's pleading did not contain an averment warranting the admission in evidence of the said checks.
3. That the checks cover a period of time prior to the time at which Robert C. Morgan acknowledged by his return and accounts over his own signature to the accounting officers of the United States that he was indebted to the United States as disbursing clerk of the State Department.

The court overruled the objections, and the checks were admitted in evidence.

To this ruling, counsel for the plaintiff then and there duly excepted.

123 The following is a list of the number, date, amount, and payee of each of the said checks:

No. of check.	Date.	Amt.	Payee.
D. 497	June 30, 1875	$3, 570	Treas. U. S.
585	Aug. 7, "	2, 095	Hon. Jno. C. New.
644	" 31, "	1, 470	"
715	Sept. 30, "	1, 230	" Treas. U. S
773	Oct. 30, "	1, 630	" Treas. U. S.
834	Nov. 30, "	1, 390	" Jno. C. New.
923	Dec. 31, "	1, 100	Hon. Jno. C. New, Treas., &c.
986	Jan. 31, 1876	1, 065	"
2027	Feb. 29, "	1, 080	"
2055	Mch. 31, "	1, 335	"
2088	April 29, "	1, 825	"
2123	May 31, "	2, 210	"
2169	June 30, "	2, 130	"
2217	July 31, "	1, 720	Hon. A. U. Wyman.
2219	July 31, "	20	"
2265	Aug. 31, "	1, 330	"
2331	Oct. 7, "	1, 395	" Treas.
2351	Oct. 31, "	1, 575	" A. U. Wyman.
2370	Nov. 29, "	1, 180	" Treas.
2416	Dec. 30, "	985	" "
2458	Jan. 31, 1877	1, 055	" "
2494	Feb. 28, "	1, 095	" "
2520	Mch. 31, "	1, 575	" "
2539	April 30, "	3, 055	" "
2564	May 31, "	4, 035	" A. U. Wyman.
2595	June 30, "	3, 405	"
2647	July 31, "	1, 685	Hon. Jas. Gilfillan.
2696	Aug. 31, "	1, 590	"
2737	Sept. 29, "	1, 260	"
2763	Oct. 31, "	1, 825	"
2790	Nov. 30, "	1, 325	"
2834	Dec. 31, "	1, 415	Hon. Jas. Gilfillan, Treas.
2867	Jan. 31, 1878	1, 510	"
2889	Feb. 28, "	1, 510	"
2927	Mch. 30, "	2, 465	"
2960	Apr. 30, "	5, 065	"
2986	May 31, "	6, 480	"
124			
3012	June 30, 1878	5, 025	"
3054	July 31, "	3, 135	"
3127	Aug. 31, "	1, 950	"
3161	Sept. 30, "	1, 710	"
3196	Oct. 31, "	1, 685	"
3228	Nov. 30, "	1, 450	"
3277	Dec. 31, "	1, 130	"
3310	Jan. 31, 1879	1, 230	"
3333	Feb. 28, "	1, 250	"
3370	Mch. 31, "	1, 810	"
3407	Apr. 30, "	2, 675	"
3431	May 31, "	3, 355	"
3450	June 30, "	2, 945	"
3566	July 31, "	1, 710	"
3589	Aug. 30, "	1, 155	"
3626	Sept. 30, "	1, 135	"
3661	Oct. 31, "	1, 400	"
3693	Nov. 29, "	1, 155	"
3730	Dec. 31, "	1, 015	"
3766	Jan. 31, 1880	1, 295	"
3798	Feb. 28, "	1, 545	"
3865	Mch. 31, "	1, 735	"
3919	Aug. 31, "	1, 185	"
	(for Aug.)		"
3933	Sept. 25, "	3, 045	"
	(for Apr.)		"
3938	Sept. 30, "	990	"
3963	Oct. 30, "	1, 200	"
3976	Nov. 30, "	1, 295	"
5703	Dec. 31, "	1, 040	"
5736	Jan. 31, 1881	1, 370	"
5766	Feb. 28, "	1, 325	"
5804	Mch. 31, "	1, 725	"
5820	Apr. 30, "	3, 265	"

No. of check.	Date.	Amt.	Payee.
D. 5846	May 31, 1881	$3, 700	Hon. Jas. Gilfillan, Treas.
5861	June 30, "	3, 790	"
5947	July 23, "	1, 990	"
5957	Aug. 31, "	1, 315	"
5980	Sept. 30, "	1, 110	"
6024	Oct. 31, "	1, 245	"
125			
6050	Nov. 30, 1881	1, 250	"
6075	Dec. 31, "	1, 055	"
6103	Jan. 31, 1882	1, 315	"
6122	Feb. 28, "	1, 270	"
6142	Mar. 31, "	2, 320	"
6165	Apr. 29, "	3, 245	"
6188	May 31, "	4, 000	"
6204	June 30, "	3, 500	"
6219	July 31, "	1, 635	"
6252	Aug. 31, "	1, 130	"
6284	Sept. 30, "	1, 030	"
6305	Oct. 31, "	1, 145	"
6334	Nov. 29, "	1, 105	"
6353	Dec. 30, "	980	"
6385	Jan. 31, 1883	1, 235	"
6406	Feb. 28, "	1, 445	"
6431	Mch. 31, "	1, 935	"
6468	Apr. 39, "	3, 130	A. U. Wyman.
6488	May 31, "	4, 045	"
6509	June 30, "	3, 080	"
6531	July 31, "	1, 560	"
6550	Aug. 31, "	1, 100	"
6575	Sept. 29, "	1, 110	U. S. Treas.
6594	Oct. 31, "	1, 250	"
6612	Nov. 30, "	1, 215	"
6625	Dec. 31, "	1, 140	"

The following are copies of three of the checks in said list and of the endorsements thereon. All of the other checks in evidence, except checks Nos. 834, 6509, and 6550, are substantially of the same form and tenor, and are similarly endorsed:

Object from passports to be turned into the Treasury.

126 D. 644.] WASHINGTON, *Aug.* 31, 1875.

TREASURER OF THE UNITED STATES:

Pay to Hon. J. C. New, Treasurer U. S., or order, fourteen hundred and seventy dollars.

$1,470. R. C. MORGAN,
Disbursing Clerk.

(Endorsement.)

Genl. ctf. No. 13674.

Paid by
Sept. 1. 1875.
Treasurer U. S.

Object passports, sold in July.

D. 2217. WASHINGTON, *July* 31, 1876.

TREASURER OF THE UNITED STATES:

Pay to A. U. Wyman, or order, seventeen hundred and twenty dollars.

$1,720. R. C. MORGAN,
Disbursing Clerk.

(Endorsement.)

Genl. ctf. No. 15079.

Paid by
Aug. 1. 1876.
Treasurer U. S.

127

Object passport, fees in Sept.

D. 2737.] WASHINGTON, *Sept.* 29, 1877.

TREASURER OF THE UNITED STATES:

Pay to the Hon. Jas. Gilfillan, Treas. U. S., or order, twelve hundred and sixty dollars.

$1,260. R. C. MORGAN,
Disbursing Clerk.

(Endorsement.)

Genl. ctf. No. 16978.

{ Paid by
Sept. 29, 1877.
Treasurer U. S. }

The following are copies of three checks which differ from the above:

Object sale of statutes and laws.

D. 834.] WASHINGTON, *Nov.* 30, 1875.

TREASURER OF THE UNITED STATES:

Pay to the Hon. Jno. C. New, Treasurer of U. S., or order, thirteen hundred and ninety dollars.

$1,390.00. R. C. MORGAN,
Disbursing Clerk.

(Endorsement.)

Gentl. ctf. No. 14035.

JNO. C. NEW, Treasurer, U. S.

{ Paid by
Nov. 30, 1875.
Treasurer U. S. }

128

State object for which drawn. Deposit.

No. (6509).

WASHINGTON, D. C., *June* 30, 1883.

TREASURER OF THE UNITED STATES,
Washington, D. C.:

Pay to Hon. A. U. Wyman, U. S. Treasurer, or order, three thousand and eighty $\frac{00}{100}$ dollars.

$3,080. R. C. MORGAN,
Disbursing Clerk.

(Endorsement).

{ Paid by
June 30, 1883.
Treasurer U. S. }

State object for which drawn.

Deposit.

No. 6550.

WASHINGTON, D. C., *Aug.* 31, 1883.

TREASURER OF THE UNITED STATES,
Washington, D. C.:

Pay to Hon. A. U. Wyman, U. S. Treasurer, or order, eleven hundred $\frac{00}{100}$ dollars.

$1,100.00.

R. C. MORGAN,
Disbursing Clerk.

(Endorsement.)

Cfd. No. 29293.

{ Paid by
Aug. 31, 1883.
Treasurer U. S. }

129 The defendant, further to maintain the issues on his part, offered in evidence certified copies of letters written by Robert C. Morgan, as disbursing clerk of the Department of State and chief of the Bureau of Accounts, to A. U. Wyman or the Treasurer of the United States, for the time being, transmitting the checks already admitted in evidence.

Plaintiff's counsel objected to the admission of the letters in evidence on the following grounds:

1. That they were immaterial, irrelevant, and incompetent.
2. That the defendant's pleading did not contain an averment warranting the admission in evidence of the said letters.

The court overruled the objection and the letters were admitted in evidence.

To this ruling counsel for plaintiff then and there duly excepted.

Each of the following letters accompanied one of the first three checks above set forth, bearing even date, and each of the three checks referred to in the above list was accompanied by a letter of similar import as the following, except check No. 2696:

"DEPARTMENT OF STATE, BUREAU OF ACCOUNTS,
"*Washington, August 31st*, 1875.

"Hon. JOHN C. NEW,
Treasurer of the U. S.:

"SIR: I have the honor to transmit herewith my check, No. 644, for one thousand four hundred and seventy dollars, the proceeds of which I will thank you to cover into the Treasury of the United States. This amount has been received at this Department for passports during the current month and is turned into the Treasury in pursuance of the act of June 20th, 1874.

"I have the honor to be, sir,

"R. C. MORGAN,
"*Chief of the Bureau of Accounts.*"

130 "DEPARTMENT OF STATE,
"*Washington, July 31st*, 1876.

"Hon. A. U. WYMAN,
"*Treasurer U. S.*:

"SIR: I have the honor to enclose herewith my check, No. D. 2217, on the U. S. Treasury for $1,720, payable to your order, and to request that the avails thereof may be covered into the Treasury of the United States, in pursuance of the act of June 20th, 1874. That amount has been received at this Department for passports during the current month. No personal credit.

"I have the honor to be, sir, your obedient servant,
"R. C. MORGAN,
"*Ch'f of Bureau of Accts.*"

DEPARTMENT OF STATE,
"*Washington, Sept. 29th*, 1877.

"Hon. JAS. GILFILLAN,
"*Treasurer U. S.*:

"SIR: I have the honor to enclose my check, No. 2737, on U. S. Treasury for $1,260, payable to your order. This amount was received for passports in September, current month. I have to request that it be covered into the Treasury in accordance with law.

"Very respectfully,
"R. C. MORGAN,
"*Ch'f of Bureau of Accounts.*"

Accompanying checks Nos. 834, dated June 30th, 1875; 6509, dated June 30th, 1883, and 65[illegible]0, dated Aug. 31st, 1883, respectively, was a letter of which the one bearing even date therewith is a copy:

131 "DEPARTMENT OF STATE, BUREAU OF ACCOUNTS,
"*Washington, Nov. 30th*, 1875.

"Hon. JOHN C. NEW,
"*Treasurer of the U. S., Washington, D. C.*:

"SIR: I have the honor to transmit herwith my check, No. 834, on the Treasury of the United States for $1,390, payable to your order, and to request that the avails thereof may be covered into the Treasury of the U. S. This amount has been received at this Department for passports during the current month, and is turned into the Treasury in pursuance of the act of June 20th, 1874.

"I have the honor to be, sir, your obedient servant,
"R. C. MORGAN,
"*Ch'f of Bureau of Accounts.*"

"DEPARTMENT OF STATE,
"*Washington, 31st August*, 1883.

"Hon. A. U. WYMAN,
"*Treasurer of the United States*:

"SIR: I have the honor to inclose my check, No. 6550, on the U. S. Treasury, for eleven hundred dollars ($1,100), made payable to your order, and to request that this amount be covered into the Treasury. This amount has been received at this Department for passport fees during the current month, and is deposited in accordance with law.

"I am, sir, your obedient servant,

"R. C. MORGAN,
"*Chief Bureau of Accts. & Disbg. Clerk.*"

The defendant, further to maintain the issue on his part, gave evidence by John Walker tending to prove that the accounts, Plaintiff's 132 Exhibits Nos. 1 and 2, of Robert C. Morgan, as disbursing clerk of the Department of State, covered the years 1881, 1882, 1883, and part of 1884.

The defendant then offered in evidence two letters dated June 4th, 1886, addressed by him to the Treasurer of the United States and the Secretary of the Treasury, respectively, and three letters written to him in reply thereto by the Treasurer and the First Comptroller of the Treasury. Plaintiff's counsel objected to the admission of the letters in evidence on the ground that this claim is not pleaded. The court overruled the objection, and to this ruling the counsel for plaintiff thereupon duly excepted.

The letters were received in evidence and are as follows:

"UNITED STATES OF AMERICA,
"TREASURY DEPARTMENT,
"*Washington, D. C., June 8th*, 1886.

"Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of papers on file in this Department.

"In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first written above.

[SEAL.]

"C. S. FAIRCHILD,
"*Acting Secretary of the Treasury.*"

"NEW YORK, 120 BROADWAY,
"*June 4th*, 1886.

"Hon. CONRAD JORDAN,
"*Treasurer of the United States:*

"DEAR SIR: I am informed that upon the adjustment and settlement of the accounts between the United States and the late Robert C. 133 Morgan, as disbursing clerk of the Department of State, a balance was found standing to his credit as such disbursing clerk with the Treasurer of the United States, and that in ascertaining this balance he was charged with the amount of certain drafts or checks now on file in your office, a list and description of which is hereto annexed, purporting to be drawn by the said Robert C. Morgan as disbursing clerk upon the Treasurer of the United States for the purpose of paying or accounting for certain moneys received in the Department of State for passports.

"I am one of the persons named as sureties in an instrument purporting to be the official bond given by the said Morgan for the faithful performance of his duties as such disbursing clerk, and am advised that the charges above mentioned were erroneously made, and that upon a proper statement of such account he should be credited with the amount of said drafts.

"I therefore present to you for examination by the accounting officers of the Treasury my claim as such surety to be allowed the amount of said drafts as a credit, and request that the accounts of said Morgan as disbursing clerk be so readjusted and resettled as to exhibit the allowance of such credit.

"As a suit upon the said bond is pending in the district court of the United States for the southern district of New York, I respectfully ask for early information of the action which may be taken upon this request.

"Very respectfully,

"HORACE M. RUGGLES."

134 *List of checks drawn upon Treasurer of U. S. by Robert C. Morgan, late disbursing clerk in the Department of State, for payment of passport funds.*

No. of check.	Date.	Amt.	Payee.
D 497	June 30, 1875	$3,570	Treas. U. S.
585	Aug. 7, "	2,095	Hon. Jno. C. New.
644	Aug. 31, "	1,470	"
715	Sept. 30, "	1,230	" Treas. U. S.
773	Oct. 30, "	1,630	" "
834	Nov. 30, "	1,390	Hon. Jno. C. New.
923	Dec. 31, "	1,100	Hon. Jno. C. New, Treas., &c.
986	Jan. 31, 1876	1,065	"
2027	Feb. 29, "	1,080	"
2055	Mch. 31, "	1,335	"
2088	Apr. 29, "	1,825	"
2123	May 31, "	2,210	"
2169	June 30, "	2,130	"
2217	July 31, "	1,720	Hon. A. U. Wyman.
2219	July 31, "	20	"
2265	Aug. 31, "	1,330	"
2331	Oct. 7, "	1,395	" Treas.
2351	Oct. 31, "	1,575	"
2370	Nov. 29, "	1,180	" Treas.
2416	Dec. 30, "	985	"
2458	Jan. 31, 1877	1,055	"
2494	Feb. 28, "	1,095	"
2520	Mch. 31, "	1,575	"
2539	Apr. 30, "	3,055	"
2564	May 31, "	4,035	"
2595	June 30, "	3,405	"
2647	July 31, "	1,685	Hon. Jas. Gilfillan.
2696	Aug. 31, "	1,590	"
2737	Sept. 29, "	1,260	"
2763	Oct. 31, "	1,825	"
2790	Nov. 30, "	1,325	"
2834	Dec. 31, "	1,415	" Treas.
2867	Jan. 31, 1878	1,510	"
2889	Feb. 28, "	1,510	"
2927	Mch. 30, "	2,465	"
2960	Apr. 30, "	5,065	"

135

No. of check.	Date.	Amt.	Payee.
D 2986	May 31, 1878	$6,480	Hon. Jas. Gilfillan.
3012	June 30, "	5,025	"
3054	July 31, "	3,135	"
3127	Aug. 31, "	1,950	"
3161	Sept. 30, "	1,710	Treas.
3196	Oct. 31, "	1,685	"
3228	Nov. 30, "	1,450	"
3277	Dec. 31, "	1,130	"
3310	Jan. 31, 1879	1,230	"
3333	Feb. 28, "	1,250	"
3370	Mch. 31, "	1,810	"
3407	Apr. 30, "	2,675	"
3431	May 31, "	3,355	"
3450	June 30, "	2,945	"
3566	July 31, "	1,710	"
3589	Aug. 30, "	1,155	"
3626	Sept. 30, "	1,135	"
3661	Oct. 31, "	1,400	"
3693	Nov. 29, "	1,155	"
3730	Dec. 31, "	1,015	"
3766	Jan. 31, 1880	1,295	"

List of checks drawn upon Treasurer of U. S. by Robert C. Morgan, etc.—Continued.

No. of check.	Date.	Amt.	Payee.
3798	Feb. 28, "	$1,545	Hon. Jas. Gilfillan.
3865	Mch. 31, "	1,735	"
3919	Aug. 31, " (for Aug.)	1,185	"
3933	Sept. 25, 1880 (for Apr.)	3,045	"
3938	Sept. 30, 1880	990	" Treas.
3963	Oct. 30, "	1,200	"
3976	Nov. 30, "	1,295	"
5703	Dec. 31, "	1,040	"
5736	Jan. 31, 1881	1,370	"
5766	Feb. 28, "	1,325	"
5804	Mch. 31, "	1,725	"
5820	Apr. 30, "	3,265	"
5846	May 31, "	3,700	"
5861	June 30, "	3,790	"
5947	July 31, "	1,990	"
5957	Aug. 31, "	1,315	"
5980	Sept. 30, "	1,110	"
136			
D 6924	Oct. 31, 1881	$1,245	Hon. Jas. Gilfillan.
6050	Nov. 30, "	1,250	"
6075	Dec. 31, "	1,055	"
6103	Jan. 31, 1882	1,315	"
6122	Feb. 28, "	1,270	"
6142	Mch. 31, "	2,320	"
6165	Apr. 29, "	3,245	"
6188	May 31, "	4,000	"
6204	June 30, "	3,500	"
6219	July 31, "	1,635	"
6252	Aug. 31, "	1,130	"
6284	Sept. 30, "	1,030	"
6305	Oct. 31, "	1,145	"
6334	Nov. 29, "	1,105	"
6353	Dec. 30, "	980	"
6385	Jan. 31, 1883	1,235	"
6406	Feb. 28, "	1,445	"
6431	Mch. 31, "	1,935	"
6468	Apr. 30, "	3,130	A. U. Wyman.
6488	May 31, "	4,045	"
6509	June 30, "	3,080	"
6531	July 31, "	1,560	"
6550	Aug. 31, "	1,100	"
6575	Sept. 29, "	1,110	"
6594	Oct. 31, "	1,250	" U. S. Treas.
6612	Nov. 30, "	1,215	"
6625	Dec. 31, "	1,140	"

137 NEW YORK CITY, 120 BROADWAY,
June 4th, 1886.

HON. DANIEL MANNING,
Secretary of the Treasury:

DEAR SIR: I am informed that upon the adjustment and settlement of the accounts between the United States and the late Robert C. Morgan as disbursing clerk of the Department of State, there was found to be due from him as such disbursing clerk to the United States the sum of $16,860.67; that in ascertaining this sum he was given credit for the balance fund to his credit as such disbursing clerk with the Treasurer of the United States, and that in ascertaining this balance he was charged with the amount of certain drafts or checks now on file in the office of the Treasurer, a list and description of which is hereto annexed, purporting to be drawn by the said Robert C. Morgan as disbursing clerk upon the Treasurer of the United States, for the purpose of paying or accounting for certain moneys received in the Department of State for passports.

I am informed also that at the time of the death of said Morgan there was found in the safe in the Department of State the sum of $7,152.83 in cash, which was disposed of as follows, viz:

$189 thereof was deposited in the United States Treasury to the credit of the sale of laws and statutes.

$1,090 thereof was deposited in the Treasury to the credit of passport funds.

$5,873.83 thereof was deposited in the Treasury to his credit as disbursing clerk.

I am one of the persons named as sureties in an instrument purporting to be official bond given by the said Morgan for the faithful performance of his duties as such disbursing clerk, and am advised that the charges
above mentioned were erroneously made; that all of the cash
138 found in his safe should have been deposited to his credit as disbursing clerk, and that upon a proper statement of the account of said Morgan as such disbursing clerk he should be credited with the amount of said drafts and also with the said sums of $189 and $1,090.

I, therefore, present to you for examination by the accounting officers of the Treasury my claim as such surety to be allowed as credits the amount of said drafts and also the said sums of $189 and $1,090, and request that the accounts of said Morgan as disbursing clerk be so readjusted and resettled as to exhibit the allowance of such credits.

As a suit upon the said bonds is now pending in the district court of the United States for the southern district of New York, I respectfully ask for early information of the action which may be taken upon this request.

Yours, respectfully,

HORACE M. RUGGLES.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., June 7th, 1886.

HORACE M. RUGGLES, Esq.,
120 *Broadway, New York City:*

SIR: Your letter of the 4th instant, addressed to the Treasurer of the United States in relation to the settlement of the accounts of the late Robert C. Morgan as disbursing clerk of the Department of State, has been received and referred to this office.

In reply I beg to inform you that all public money entrusted to a disbursing officer of the Government is placed to his credit with the Treasurer of the United States or some assistant treasurer, as required by section
3620 of the Revised Statutes, and such disbursing officer is au-
139 thorized "to draw for the same only as it may be required for payments to be made by him in pursuance of law."

The officer is charged with the advances of public money made to him on warrants and credited with the disbursements shown by his vouchers; and his deposit account with the Treasurer or Assistant Treasurer and the checks drawn upon the same have no connection with the settlement of his accounts by the accounting officers.

The advances of public money to the late Robert C. Morgan as disbursing clerk of the Department of State were made upon requisitions of the

Secretary of State under appropriations out of which he was authorized to make disbursements, by warrants of the Secretary of the Treasury countersigned by the First Comptroller, as required by law, and the amounts so advanced were charged to him under said appropriations on the books of this Department.

In the settlement of the accounts the late disbursing clerk has been charged with all moneys so advanced to him and credited with the payments shown by his vouchers, and the balance due the United States agrees substantially with the amount admitted due by the accounts rendered.

The vouchers upon which the late disbursing clerk received credit are the receipts of the respective parties to whom the payments were made, and the checks drawn by him to make such payments were not considered in connection with the settlement of his accounts, since the accounting officers are not required to settle or examine the deposit accounts of disbursing officers with the Treasurer or Assistant Treasurer, and consequently have no knowledge of checks drawn upon the same.

The law (18 Stats., 90) requires that the fees collected for passports issued from the Department of State shall be paid into the Treasury at least quarterly; hence such fees collected at said Department can have no 140 lawful connection with the advances made to the late disbursing clerk out of the several appropriations authorizing disbursements for specific purposes.

The accounting officers have no official knowledge or information as to any drafts or checks drawn by the late R. C. Morgan for "passports," and if any checks or drafts were drawn by him on his deposit account with the Treasurer of the United States or Assistant Treasurer to make good any deficit on account of passport fees collected, it was as much a misapplication of the public funds and breach of the condition of his bond as if he had used the public money entrusted to him as disbursing clerk for any other unauthorized and illegal purpose.

I am, very respectfully,

[SEAL.]

M. J. DURHAM,
First Comptroller.
J. W.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., June 7th, 1886.

HORACE M. RUGGLES, Esq.,
120 *Broadway, New York City.*

SIR: Your letter of the 4th instant, to the Secretary of the Treasury, in relation to the accounts of the late Robert C. Morgan, as disbursing clerk of the Department of State, has been received and referred to this office, and in reply your attention is invited to my letter addressed you this day in reply to yours of the 4th instant, addressed to the Treasurer of the United States.

In addition I have to say that it is presumed any moneys found in Mr. Morgan's safe after his decease were, under the direction of the 141 Secretary of State, paid into the Treasury to the credit of Mr. Morgan, in accordance with the statements kept by him.

This office has no official information relative to any accounts Mr. Morgan may have had other than his accounts for the disbursement of public moneys, and he has been credited in the settlement of those accounts with all amounts repaid to his credit thereon.

I am, very respectfully,

[SEAL.]

M. J. DURHAM,
First Comptroller.
J. W.

142 *Circular instructions relative to public moneys and official checks of United States disbursing officers.*

1876.
Department No. 107.
Ind. Treas. Div. No. 26.

TREASURY DEPARTMENT,
Washington, D. C., August 24, 1876.

The following sections of the Revised Statutes are published for the information and guidance of all concerned:

"SECTION 3620. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no Treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize, in writing, the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

"SECTION 5488. Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any
143 manner except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is in every such act deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied, and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment."

In accordance with the provisions of the above sections, any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some assistant treasurer, or designated depositary other than a

As disbursing clerk he had charge of and disbursed certain funds appropriated by Congress from time to time for specific purposes. For the amounts thus appropriated warrants were drawn by the Secretary of the Treasury upon the Treasurer of the United States, directing that the amounts appropriated on account of a particular fund be placed to the credit of Mr. Morgan for that purpose on the books of the Treasury; and such credits were accordingly given him by the Treasurer from time to time from May, 1875, until Mr. Morgan's death, in January, 1884.

Under the provisions of the Rev. St. (secs. 3620 to 3623) Mr. Morgan was not authorized to draw, nor the Treasurer to pay, from these 148 appropriations or credits any sums other than as authorized by law, on account of the appropriations respectively. Each sum placed to his credit under the warrants above referred to constituted a specific fund, which could not be legally appropriated to any other purpose than that authorized by the act of Congress for which it was appropriated.

The accounts of Mr. Morgan were made up by the accounting officers of the Treasurer from the vouchers returned to them by him from time to time as respects each fund. These accounts from 1882 to 1884 embrace eleven different appropriations, upon which, after his death, a total deficit was made up amounting to $16,860.67, for which the defendants, as sureties, have been sued. In the balances struck before his death no account, however, was taken of any moneys that might be in the Treasury undrawn applicable to these accounts. The balance as to each account, as it appears on the Treasury accounts, represents only the amount of the appropriation that appeared to be unexpended. There is no evidence that any demand was made upon Mr. Morgan to make any further disposition of these apparent balances, or to cover the sum into the Treasury. In the final account made after his death, however, credit was given to him for what moneys were found remaining in his account with the Treasurer; and also for the sum of $5,873.83, cash found in his safe, after first applying $1,279 on account of passport moneys and proceeds from the sales of Statutes, which his memorandum showed to be due on the latter accounts for the current month.

The evidence shows that Mr. Morgan did not deposit in his account with the Treasurer any of the moneys received from passports or the sales of Statutes, but indicate that his practice was, in some cases, to make use of the passport moneys in his hands in paying claims upon him as 149 disbursing officer, instead of drawing upon the specific appropriation for the latter purpose. At the end of each month it was his practice to draw upon his account with the Treasurer a check for the amount of money received from passports and the sales of Statutes during the current month, making this check payable also to the Treasurer, and to send this check to the Treasurer with a letter stating that the check was drawn in payment of passport moneys received by him for the current month for deposit with the Treasurer. The check also on its face showed the same purpose. The checks were debited against Mr. Morgan in the Treasury account. The amount of the checks for passport moneys thus debited against his account as disbursing officer during the eighteen months in which the balance now sued for accrued amounted to about $29,000. If these debits were not lawfully made, or if the defendants, as sureties for Mr. Morgan as disbursing officer, are entitled to have those debits canceled, then the accounts will show nothing due from him as disbursing officer, and the plaintiffs would not be entitled to recover in this action.

From what has been said, it is manifest that Mr. Morgan did not keep distinct his transactions as respects the two classes of funds, as required by law; he used passport moneys in his possession to pay demands upon the other funds; and he afterwards drew checks upon the specific appropriations for the purpose of paying into the Treasury the passport moneys which he was bound to pay over to the Treasury. This course of procedure was unauthorised and illegal. No harm, indeed, would come from it, provided the checks on the Treasurer were no greater than the amount of cash received from passport moneys that he had already applied in payment of claims on him as disbursing officer. But the whole balance now
claimed against these sureties arises in consequence of the fact that
150 the amounts were not the same; and because his checks on the
Treasurer were so much in excess.

The drawing of these drafts on the Treasurer was doubtless a violation of the terms of the defendant's bond for "the faithful discharge of his duties as disbursing officer." If by means of these drafts the United States had been deprived of any moneys, or had sustained any pecuniary damage, or any moneys had, in the language of Mr. Justice Blatchford, in the case of Morgan vs. Van Dyke (7 Blatch., 150), "been withdrawn from the custody of the Treasurer" and lost to the Government, the defendants would have been answerable for the deficiency shown. The evidence is clear, however, that there was no withdrawal. The balances in the Treasury were unchanged; precisely the same money was in the Treasurer's hands before as after these drafts. There is no evidence that at the time of the commencement of this action, or now, there has been any change in respect to any of the moneys in the Treasury by reason of these drafts and the debits made thereon against Mr. Morgan's account as disbursing officer.

The drafts were clearly unlawful; the debits based on them were equally unlawful. On their face the draft and the letter showed this illegality. The letters stated explicitly that Mr. Morgan had collected the amount named "during the current month for passport moneys," and that he deposited them with the Treasurer; that is, by means of the draft enclosed. But in fact Mr. Morgan deposited nothing. He added nothing to the money in the Treasury. Instead of doing so, as he was bound to do, he unlawfully drew a check against his disbursing account, which it was illegal to appropriate to any such purpose. The Treasurer thereupon debited one account and credited the other. The only change made by these acts is a matter of bookkeeping. The money remained in the
Treasury precisely as before. The amount now sued for has never
151 been withdrawn from the Treasury; it was illegally debited against
the disbursing officer's account; and in the eye of the law was known to be so by the Treasurer; and as against the sureties, who are not liable for the passport money, such a debit must be treated as a void act.

In the case of separate sets of sureties for the same officer during separate terms of office, it has been repeatedly adjudicated by the Supreme Court that by no act of the officer or of the Treasury Department, or of both combined, can official moneys, collected by the officer and paid into the Treasury Department during one term of office, be appropriated to the accounts of the other term, to the prejudice of sureties (U. S. vs. January, 7 Cranch, 572, 575; U. S. vs. Eckford, 1 How., 250, 262; Jones vs. U. S., 7 How., 681, 688).

The same was held also in the recent case of State vs. Middleton, 57 Texas, 185, Murfree's Official Bonds, Sec. 291.

The same principle is applicable to the present case. The evidence shows that there is no deficit and no defalcation, as respects the disbursing accounts, for which alone the defendants became liable as sureties. The deficit is solely in the passport funds, for which the defendants never became sureties. The Government, having taken no security for Mr. Morgan's acts as respects passport moneys, stands itself as its own security for his acts in regard to those moneys. The situation is the same as though there were two sets of sureties, one for the passport funds and the other, the defendants, for the disbursing account. Mr. Morgan, by his drafts on the Treasurer, undertook to appropriate a part of the disbursing account to the discharge of his independent obligations for passport moneys. The treasurer concurred in the act with full knowledge of the facts; but he parted with no money; he only made the corresponding entries in the books. The act was a fraud on the defendants, as sureties, and
152 illegal as respects all who concurred in it. Having parted with
nothing, the United States, in making up its account of the balance due on Mr. Morgan's disbursing account, can not claim the benefit of those illegal debits to the prejudice of the sureties. The latter are entitled, as in the case of U. S. vs. Eckford, supra, to have the disbursing accounts restated, and the illegal debits cancelled. Upon such a readjustment the evidence is clear that nothing would be owing on the disbursing account; and a verdict should therefore be directed for the defendants.

To which charge and direction counsel for plaintiff there and then duly excepted.

In accordance with the direction of the court, the jury returned a verdict for the defendants.

The plaintiffs except to the direction of the verdict in favor of the defendants and also except to the refusal of the court to direct the verdict for the plaintiffs.

A stay of proceedings for ninety days is granted to the plaintiff.

The jury thereupon, by direction of the court, rendered their verdict in favor of the defendant and against the plaintiff, and thereupon the plaintiff prayed this its bill of exceptions, and the same, containing all the material evidence, is signed and settled accordingly by the district judge as of the 16th day of June, 1886, before the jury left the bar.

(Approved:)

ADDISON BROWN.

It is hereby stipulated and consented that the foregoing be signed and sealed as and for the bill of exceptions herein.

March 21st, 1887.

STARR & RUGGLES,
Attorneys for Defendants.
STEPHEN A. WALKER,
Attorney for Plaintiff.

153 District court of the United States, southern district of New York.

THE UNITED STATES OF AMERICA
against
ROBERT C. MORGAN, ALBERT R. Bass, Charles E. Whitehead, and Horace M. Ruggles.
} Postea.

This action having come duly on for trial before the Hon. Addison Brown and a jury, on the sixteenth day of June, 1886, at the rooms of this court, in the United States General Post-Office building, in the city of New York, in said district, and having been then and there tried, and a verdict having been rendered by the jury for the defendant,

Now, on failure of Starr & Ruggles, defendants' attorneys, to enter judgment, and on motion of Stephen A. Walker, United States attorney,

It is hereby ordered and adjudged that the defendants have judgment in their favor in this action against the United States of America, the plaintiff.

Dated March 22d, 1887.

SAMUEL H. LYMAN,
Clerk.

To STARR & RUGGLES,
Attorneys for Defendants:

SIRS: Take notice that the foregoing is a copy of a judgment in the above-entitled action entered in the clerk's office of the United States district court, New York City, on March 22d, 1887.

STEPHEN A. WALKER,
U. S. Attorney.

154 UNITED STATES OF AMERICA, *ss:*

To Robert C. Morgan, Albert R. Bass, Charles E. Whitehead, and Horace M. Ruggles, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States to be holden at the city of New York, on the first Monday of April, eighteen hundred and eighty-seven, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the southern district of New York, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated March 22d, 1887.

ADDISON BROWN.

155 Circuit court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
ROBERT C. MORGAN, ALBERT R. BASS, Charles E. Whitehead, and Horace M. Ruggles, defendants in error.
} Assignment of errors.

Afterwards, to wit, on the first Monday of April in the same term, before the justice of the said court, at the Post-Office Building in New York City, comes the said plaintiff in error by Stephen A. Walker, esq., its attorney, and says:

That in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants; and the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that it, the said plaintiff, may be restored to all things which it has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
U. S. Attorney, Attorney for Plaintiff in Error.

156 Circuit court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
against
ROBERT C. MORGAN, ALBERT R. BASS, Charles E. Whitehead, and Horace M. Ruggles, defendants in error.
} Joinder in error.

And afterwards, to wit, on the first Monday of April, in said term, the said defendants in error, by Starr & Ruggles, their attorneys, come here into court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said circuit court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

157 U. S. circuit court southern district of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
ROBERT C. MORGAN AND O'RS, DEFENDANTS IN error.
}

For plaintiff in error: Stephen A. Walker, U. S. att'y and Abram J. Rose, asst. U. S. att'y.

For defendent in error: Thomas W. Osborn.

This action is brought to recover on a surety bond conditioned for "the faithful discharge of his duties" by Robert C. Morgan as Chief of the Bureau of Accounts in the Department of State. Defendants had judgment in the district court and the plaintiff has taken a writ of error.

Morgan while holding office received money from two different sources.
There was from time to time placed to his credit with the Treas-
158 urer or assistant treasurer, and subject to his draft, certain funds ap-
propriated by Congress to certain specified objects, connected with
disbursements of the Department of State for the contingent expenses of
foreign missions, consulates, and similar purposes. The receipt and dis-
bursements of these monies were within the duties whose faithful dis-
charge the bond sued on was given to secure.

He also received from time to time certain passport fees and moneys for the sale of the U. S. Statutes which he was required by law to cover into the Treasury. For his conduct in connection with these fees and moneys defendants were not sureties. Nor indeed was any bond required; for his honesty in that regard the United States were their own insurers.

As to the details of the embezzlement, which is the cause of this action,
the evidence, naturally enough, is not very specific. It may fairly be in-
ferred, however, that Morgan's method of proceeding was as follows: He
received from time to time bank bills, Treasury notes, or coin in
159 payment of passport fees or for the sale of Statutes. These bills,
notes and coin he appropriated to his own use, and when the month
came to an end he was a defaulter to the Government to the amount of the
moneys so received. Thereupon he drew a draft against his account as
disbursing clerk for an amount equal to his defalcations during the month
and passed it over to the Treasurer or assistant treasurer with the request
that it be covered into the Treasury as the amount received from passports
during the current month. Thereupon the amount of these drafts was
charged to the disbursement account and credited to the passport fee ac-
count.

The cases of U. S. v. January, 7 Cranch, 572; U. S. v. Eckford, 1 How.,
250, and Jones v. U. S., 7 How., 681, referred to in the opinion of the
learned court below, seem to be controlling of this case. If there were
another set of bondsmen who guaranteed Morgan's faithful service in the
receipt and disposition of passport fees and moneys for the sale of statutes,
the loss which the United States have sustained would be, under these
decisions, recoverable from them and not from the defendants.
160 The situation is certainly not changed by the circumstance that the
Government stands as its own security for Morgan's acts in regard
to the moneys he embezzled.

The judgment is affirmed on the opinion of the district judge.

(Signed) E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court, southern dist. of New York. The United States of America vs. Robert C. Morgan and ors. Decision. Lacombe, J.

(File mark:) U. S. circuit court. Filed June 26, 1888. John A. Shields, clerk.

161 At a stated term of the circuit court of the United States, held in and for the southern district of New York, at the U. S. post-office and court-room building in the city of New York, on the 31st day of Aug't, 1888. Present: Hon. E. Henry Lacombe, judge.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
against
ROBERT C. MORGAN, ALBERT A. BASS, Charles E. Whitehead, and Horace M. Ruggles, defendants in error.

The United States of America, the plaintiff in error in the above-entitled action, having by writ of error brought to this court for review the judgment of the United States district court for the southern district of New York entered herein on the 22nd day of March, 1887, in favor of the defendants in error and against the plaintiff in error, and the 162 said writ of error having come on to be heard before this court upon the bill of exceptions of the plaintiff in error and after hearing Abram J. Rose, esq., assistant U. S. attorney, of counsel for the plaintiff in error, and Thomas W. Osborn, esq., of counsel for the defendant in error Horace M. Ruggles: Now, on failure of Starr & Ruggles, defendants' atttorneys, to enter an order affirming the judgment of the district court, and on motion of Stephen A. Walker, United States attorney, it is ordered that said judgment of the district court be and the same hereby is in all respects affirmed.

(Signed) E. HENRY LACOMBE.

(Endorsed.)

GENTLEMEN: Please to take notice that the foregoing is a copy of the proposed order of affirmance in the above-entitled action, and that the same will be presented for settlement at a term of the circuit court of the United States for the southern district of New York, to be held at the U. S. court-rooms and post-office building in the city of New York, on the 31st day of August, 1888, at eleven o'clock in the forenoon of that day.

Yours, respectfully,
163 (Sgd.) STEPHEN A. WALKER,
U. S. Attorney.

TO STARR & RUGGLES, Esq's.,
Atty's for Deft. in Error Ruggles.

(Further endorsed:) U. S. circuit court, southern district of New York. The United States, pl'ff in error, vs. Robert L. Morgan & al., defts in error. Order and notice of settlement. Stephen A. Walker, U. S. attorney, att'y for pl'ff in error.

(File mark:) U. S. circuit court. Filed Sept. 4, 1888. John A. Shields, clerk.

164 U. S. circuit court, southern district of New York, in the second circuit.

THE UNITED STATES OF AMERICA, plff. in error,
vs.
ROBERT C. MORGAN, ALBERT R. Bass, Charles E. Whitehead, and Horace M. Ruggles, defts. in error.
} Posted.

The writ of error taken herein having been argued, and an order duly entered affirming the judgment of the district court entered in the action on the 22nd day of March, 1887, in favor of the defendant and against the plaintiff.

Now, on failure of Starr & Ruggles, defendants' attorneys, to enter judgment, and on motion of Stephen A. Walker, U. S. attorney, it is adjudged that the said judgment of the district court be, and the same hereby is, in all things affirmed.

Judgment signed this fifth day of September, A. D. 1888.

(Signed) G. E. ROGERS,
Deputy Clerk.

165 (Endorsed:) U. S. circuit court, southern district of New York. The United States, plff. in error, versus Robert C. Morgan & al., deft. in error. Posted. Stephen A. Walker, United States attorney.

You will please take notice that a judgment, of which the within is a copy, was this day duly entered in the within entitled action in the office of the clerk of the U. S. circuit court, S. D. of N. Y.

Dated N. Y., Sept. 5, 1888.

Yours, etc.,
(Sgd.) STEPHEN A. WALKER,
U. S. Attorney, Attorney for Plff. in Error.

TO STARR & RUGGLES,
Atty. for Defts. in Error.

(File mark:) U. S. circuit court. Filed Sept. 5, 1888. John A. Shields, clerk.

166 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, plaintiff in error,
vs.
HORACE M. RUGGLES, IMPLEADED with Robert C. Morgan, defendant in error.
} Assignment of errors.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court at the Capitol in Washington, come the said plaintiff in error by Stephen A. Walker (his), their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant, Horace M. Ruggles.

And the said plaintiff pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he (they) the said plaintiff may be restored to all things which he (they) has (have) lost by occasion of said judgment, &c.

(Sgd.) STEPHEN A. WALKER,
U. S. Attorney.

167 (Indorsed:) United States Supreme Court. The United States of America, plaintiff in error, vs. Horace M. Ruggles, impleaded with Robert C. Morgan et al., defendant in error. Assignment of error. Stephen A. Walker, attorney for plff. in error.

Service of a copy of the within assignment of error is hereby admitted this 11th day of Sept., 1888. Starr & Ruggles, attorneys for deft. in error.

(File mark:) U. S. circuit court. Filed Sept. 11, 1888. John A. Shields, clerk.

168 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, plff. in error,
vs.
HORACE M. RUGGLES, IMPLEADED with Robert C. Morgan *et al.*, deft. in error.
} Joinder in error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Starr & Ruggles, their attorneys, comes here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

(Sgd.) STARR & RUGGLES,
Attorneys for Defendant in Error.

169 (Indorsed): United States Supreme Court. The United States of America, plaintiff in error, *vs* Horace M. Ruggles, impleaded with Robert C. Morgan et al., defendant in error. Joinder in error. Starr & Ruggles, attorneys for defendant in error.

Service of a copy of the within joinder in error is hereby admitted this 11 day Sept., 1888. (Sg'd) Stephen A. Walker, attorney for plaintiff in error.

(File mark.) U. S. circuit court. Filed Sept. 11, 1888. John A. Shields, clerk.

170 UNITED STATES OF AMERICA, *ss*:

To Horace M. Ruggles, impleaded with Robert C. Morgan et al., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated September 10th, 1888.

E. HENRY LACOMBE,
Circuit Judge.

171 (Indorsed:) U. S. Supreme Court. The United States of America, plaintiff in error, against Horace M. Ruggles, impleaded with Robert C. Morgan et al., defendant in error. Original citation. Stephen A. Walker, attorney for plaintiff in error.

Service of a copy of the within citation is hereby admitted this 11 day of Sept., 1888. Starr & Ruggles, attorneys for defendant in error.

(Stamp:) U. S. circuit court. Filed Sep. 11, 1888. John A. Shields, clerk.

(Indorsement on cover:) No. 142. The United States, plaintiff in error, *vs.* Horace M. Ruggles, impleaded with Robert C. Morgan, Albert R. Bass, and Charles E. Whitehead. S. New York, C. C. U. S. Filed October 2, 1888.

○

145 US 662

No. 1558 ?

~~[illegible]~~

~~[illegible]~~

151 US

United States Supreme Court.

IN THE MATTER

of

THE APPLICATION OF HORATIO J. J. WISE, for a Writ of Certiorari under the Act of Congress of March 3, 1891.

Petition and Record.

JAMES THOMSON,
Of Counsel for Petitioner,
52 Wall Street, N. Y.

1

To the Honorable
The Supreme Court of the United States.

The petition of Horatio J. J. Wise, Master of the British steamship "Lepanto," her engines, etc., respectfully shows:

First.—That on or about the fifth day of May 1890,
a libel *in rem* against said British steamship "Lepanto,"
her engines, etc., was filed in the District Court of the
United States for the District of Maryland by Myers 2
Bennett, master, and William A. Anderson, managing
owner of the schooner "Cassie A. Bronson," on behalf
of themselves and the other owners of the said steamer,
for the recovery of damages alleged to have been sustained by reason of the collision between the said
schooner and said steamer on the morning of April 23.
1890; that process issued against said steamship, and
that thereafter petitioner appeared and bonded said
steamer, entered into stipulations and filed answer to
said libel.

Second.—That on or about the thirteenth day of May
1890, petitioner filed a cross libel *in rem* in said ourt
against said schooner "Carrie A. Bronson," her tackle, 3
etc., to recover the damages sustained to the steamer by
the collision, and thereafter said William A. Anderson,
as managing owner of the schooner, appeared and bonded
said schooner and entered into stipulations.

Third.—That such proceedings were thereafter had in said causes, that on November 7. 1890, final decree

4 was entered therein, adjudging that the libellants in the original cause recover the sum of $10,000, as and for their damages sustained by said collision, with interest and costs, and dismissing the cross libel of petitioner with costs.

Fourth.—That on November 7. 1890, petitioner appealed from such decree to the Circuit Court of the United States for said district; that the Circuit Judge upon the hearing of such appeal made and signed the findings of fact and conclusions of law proposed on behalf of the schooner "Bronson," which are found in the record of said causes; and that on June 30. 1891, final decree was entered by said Court in said causes affirming the decree of the District Court, with costs. 5

Fifth.—That out of abundant caution petitioner filed exceptions to the findings of fact and conclusions of law of said Circuit Judge, and to the failure and refusal of the said Circuit Judge to find the findings of fact and conclusions of law requested on behalf of petitioner, and made and filed bill of exceptions and obtained the the same to be duly signed and sealed.

Sixth.—That no opinion in said cause was written by either the District Court or the Circuit Court, and the argument had to be conducted upon the part of appellant in the Circuit Court of Appeals without knowledge of the views of the courts below upon which their decisions had been made. 6

Seventh.—That petitioner appealed from the said decree of said Circuit Court to the United States Circuit Court of Appeals for the Fourth Circuit, and said appeal came on for hearing and was argued before the Honorable Melville W. Fuller, Chief Justice of the United States, and the Honorable John Hughes, Judge of the District

Court of the United States for the District of Virginia, 7
holding the said Circuit Court of Appeals, on the second day of February last.

That on the eleventh day of April an opinion was filed, holding the said steamship Lepanto in fault for not porting her helm until the green light of the "Bronson" was seen, and for no other reason. That said opinion also holds that *the lights of the schooner were obscured from the view of those on the steamer until the helm of the steamer was put hard-a-port.* That the obscuration of said lights was not imputed as fault against the schooner.

The language of the opinion in reference to the schooner's lights is as follows: 8

"It is true that those of the Lepanto's crew who were "examined, all say that they did not see the red light "of the schooner until shortly before the collision; "their testimony being as follows, respectively: The "first officer says, 'about three or four minutes before;' "the third officer mentions no time, but first saw the "red light 'about one and a half points off our star-"board bow, about half a mile, I should say, or a quar-"ter of a mile from us'; Howard, the lookout, says, 'two "or three or four minutes, bearing a point and a half "on the starboard bow'; and Kilby, the pilot, says, "'saw a red light about a point and a half on the star-"board bow, about three minutes before the collision.' 9
"It would be unreasonable to question the sincerity or "truth of these statements. *It must be conceded that "the red light of the schooner, though in its place and "burning, was not visible to these witnesses until "shortly before the time, and within half a mile, of the "place of collision; a fact which was doubtless due to "the feebleness of the breeze, and the consequent slack*

10 *“ condition of the sails of the schooner hanging ‘way*
“ off the port side,’ obscuring the red light.”

That the evidence in said causes is direct, circumstantial and positive that the helm of the said steamer was put hard-a-port immediately on seeing the red light of the schooner, and that there is no evidence which directly or indirectly contradicts or impugns such statements ; that no claim was made on behalf ot the schooner that the helm was not so hard-a-ported, and that *the Circuit Judge upon the request of the counsel for the schooner found the following as a finding of fact :*

“ No lights or vessels were seen by any of the steam-
11 “ er’s watch until 12:45 A. M., *when the red light of the*
“ *schooner ‘Cassie F. Bronson’ was first seen* by the
“ officers on the bridge and then by the lookout about
“ one and a half points on the steamer’s starboard bow
“ about a quarter of a mile distant ; *her helm was* IM-
“ MEDIATELY *put hard-a-port and her head fell off to*
“ *starboard, so that she was heading about W. ½ N. at*
“ *the time of the collision.*”

The evidence on the subject, in the cause, on which the said finding of fact is based, is as follows :

George Yates, the first officer of the Lepanto, testified :
“ I continued to look at her to see if I could make
12 “ out if there were any lights on her, for the purpose of
“ ascertaining if I could in what direction she was go-
“ ing, and I suddenly saw a red light appear, a very
“ bright red light, just appeared very suddenly, all at
“ once.

“ Q. Bearing how from your steamer ? A. About a “ point and a half on the starboard bow. * * * *

“ Q. When you saw it, what was done on board your “ steamer? A. I put my helm hard-a-port to bring it on my port bow ; that is, his red light.

"Q. What effect did it have? A. I brought it on 13
my port bow about three points. After it remained there a few seconds I saw the red light close out, and he opened out his green light on my port bow. * * *

"Q. About how long before the collision was it that you first saw "the red light on the 'Bronson'? A. "About three or four minutes; about three minutes as near as I could say.

"Q. About how long before the collision was it that "the red light was shut out and the green light brought "into view? A. A few seconds—about half a minute "I should say; from half a minute to a minute as near "as I could judge. * * * * *

"Log of steamship 'Lepanto' from Boston towards 14
"Baltimore:

Wednesday, April 23d, 1890.

"A. M., about 0:45, moderate breeze and clear weather,
"but dark. An object was seen about one and a half
"points on the starboard bow. At the time the
"steamship Lepanto was steering S. W. ½ S., and
"steaming from ten to eleven knots per hour. Wind
"South. I, George Yates, mate of the steamship Le-
"panto, and in charge of the watch, took the vessel to
"be going the same way as ourselves, as she was show-
"ing no lights. Watching her carefully to make sure
"which way she was going. I suddenly saw her ex-
"hibit a red light about one and a half points on our
"starboard bow. I AT ONCE put our helm hard-a-port 15
"and brought the red light about three points on our
"port bow. The helm was kept hard-a-port. The
"schooner must have put her helm to starboard as she
"opened out her green light and closed in her red light
"on our port bow.

Cross-examined:

"Q. Did you and the third officer consult as to what

16 "you should do? A. No, sir; I gave the order *at* "*once* to hard-a-port when I saw the red light."

William Holmes Wadworth, the second officer, testified:

"Q. What did you afterwards see on this object? A. "I saw a red light suddenly appear.

"Q. Bearing in what direction from the Lepanto? "A. About one and a half points off our starboard bow.

"* * *

"Q. After this red light was observed, what was done "on board the Lepanto? A. The mate told the helmsman to port.

17 "Q. To port or to hard-a-port? A. To hard-a-port.

"Q. Was that order given immediately upon seeing "the red light or did an interval of time elapse? A. "No, sir; *not an interval.* It was given *immediately* "upon the appearance of the red light.

"Q. State whether or not it was obeyed? A. It "was.

"Q. *Immediately* or not? A. It was.

"Q. What effect did the execution of that order have "upon the Lepanto? A. It brought that red light "about three points off the port bow of the Lepanto.

"* * * *

"*Cross-examined:*

18 "Q. Did the lookout make any report of this vessel? "A. He did not until he saw the red light.

"Q. Did you see the red light before he reported it? "A. Yes, sir.

"Q. What did he say when he reported it? A. He "said: 'A red light on the starboard bow.'

"Q. And you had seen it before that? A. I was just "going to sing out to him.

"Q. Was the helm hard a-port when he sung out?

"A. Yes, sir; he sung out about the same time that the "mate put the helm hard-a-port. 19

"Q. Did you see the red and green lights both at the "same time? A. No, sir."

George Howard, the lookout, testified:

"Q. What light did you see? A. Her red light.

"Q. Bearing how from your steamer? A. Bearing "a point and a half on the starboard bow.

"Q. Did you report it or not? A. Yes, sir, right "away.

"Q. What, if any, change of course was made by the "Lepanto after that simultaneously with your reporting this red light? A. Her head was paid off to 'starboard. 20

"Q. Over which bow did you then see the red light? "A. In a short time after that I saw the red light on to "the port bow, I should say, about two points and a "half to three points, as near as I could judge.

"Q. Could you then see any green light on the object "ahead. When you first saw the red light on your port "bow, could you see any green light? A. No, sir.

"*Cross-examined:*

"Q. Did they say anything to you on the bridge "about the light? A. After I reported it do you "mean?

"Q. At any time? A. Yes, sir. I sung out to the "chief officer 'Red light on the starboard bow;' he said, "'All right,' and the ship started to pay away to starboard *directly*. 21

Henry Kilby, the wheelsman, testified:

"Q. When and how did you become aware of the "approach of the schooner Cassie F. Bronson? A. "When the chief officer told me to put the helm hard-

22 "a-port; I looked up then, and that was the first time "that I saw her.

"Q. What did you see? A. I saw a red light about "a point and a half on the starboard bow.

"Q. Did you see that the first time that you looked? "A. Yes, sir.

"Q. What did you do in consequence of the order to "put your helm hard-a-port. A. Put it hard-a-port.

"Q. How is your helm operated, by steam or other"wise? A. By steam.

"Q. Does your steamer obey her helm readily or other"wise? A. Yes, sir; very quickly.

"Q. What effect did the execution of the order have "upon the course of your steamer, what direction did it "throw her head? A. To starboard, to the westward. 23

"Q. After this order was executed, off which bow of "the Lepanto could you see the red light of the schooner "Bronson? A. On the port bow.

"Q. How many points? A. About three points or "three and one-half points.

"Q. Could you then see any green light at first? A. "*No, sir; the red light only.*

"Q. What did you afterwards see? A. I saw the "green light.

"Q. Was there a red light then visible or had it been "shut out? A. She had shut it out."

24 *Eighth*—That the language of the opinion of the Circuit Court of Appeals in reference to the porting of the helm is as follows:

"It is true that the witnesses for the Lepanto insist "that, while she still had the schooner a point and a "half on her starboard bow, and was a quarter to a half "a mile off; and immediately on seeing the schooner's "red light, and several minutes before that vessel's "green light appeared, she made the manœuvre of put-

" ting her helm hard-a-port. But the Lepanto's testi- 25
" mony on the crucial point of the time of putting her
" helm hard-a-port itself leaves the impression, notwith-
" standing the language of the witnesses to the contrary,
" that the steamer had crossed the schooner's course,
" and that the green light had shown itself when the
" helm was put to port. But such an examination is
" unnecessary here, because a collision would have
" been physically impossible if the helm had been put
" hard down as described by the steamer's witnesses
" 'three to four minutes' before the collision, when the
" steamer was at a distance of 'a quarter to half a mile'
" from the schooner, and still had her 'a point and a
" half on her starboard bow.' The steamer's pilot tes-
" tifies with apparent pride that she obeyed her helm 26
" readily, very quickly,' and the proposition must be
" absolutely rejected that a steamer thus exceptionally
" responsive to her wheel failed, with her helm hard-a
" port, to clear a vessel on her starboard bow, more than
" a quarter of a mile and three or four minutes off.

" Given, the proposition of a slowly moving schooner
" on the starboard of a steamer; given the facts, that a
" half laden steamer, readily and quickly obedient to
" her wheel, moving ten miles an hour, puts helm hard
" down, and coming around strikes the schooner with
" her port side; on these premises, the conclusion is ir-
" resistible that this steamer was in very close proximity
" to the schooner when she put her helm hard down. In 27
" the matter of the Lepanto, the conclusion is ir-
" resistible that the schooner's green light had shown
" itself when the steamer's helm was put to port.

" The collision could not have occurred if the helm
" had not been put down after the schooner's course had
" been crossed; and the steamer was in fault in putting
" it hard to port after that crossing, and, doubtless,
" after the schooner's green light was shown."

28 *Ninth.*—That the rules for the prevention of collisions on the water (Rev. Stat., U. S., §4,233) in reference to the lights to be carried by sailing vessels are as follows:

"RULE THREE. All ocean-going steamers and steam-
"ers carrying sail shall, when under way, carry * * *
"(B.) On the starboard side a green light of such
"a character as to be visible on a dark night, with
"a clear atmosphere, *at a distance of at least two*
"*miles*, and so constructed as to show a uniform and
"unbroken light over an arc of the horizon of ten points
"of the compass, and so fixed as to throw the light
"from right ahead to two points abaft the beam on the
"starboard side.

29 "(C.) On the port side a red light of such a character
"as to be visible on a dark night, with a clear atmo-
"sphere, *at a distance of at least two miles*, and so
"constructed as to show an unbroken light over an arc
"of the horizon of ten points of the compass, and so
"fixed as to throw the light from right ahead to two
"points abaft the beam on the port side. * * *

"RULE EIGHT. Sail vessels under way or being
"towed *shall carry the same lights* as steam vessels
"under way, with the exception of the white masthead
"lights, which they shall never carry."

That, as already stated, the decision of the said Circuit Court of Appeals finds that the lights of the said
30 schooner were obscured until the steamer was within half a mile of the schooner, *and that the schooner was not in fault for such obscuration of her lights*; that the effect of such decision is that fault is not to be imputed to a sailing vessel whose lights at night are obscured by her sails or other obstruction on board of her, and under the control of her master and officers; that such decision is a new interpretation of the international rules for preventing collisions at sea, and is contrary to

the decisions as heretofore pronounced by the courts of the United States, and unless reviewed and reversed by this Honorable Court will stand as a precedent governing similar cases, and affecting all the mercantile marine of the United States, and all foreign vessels plying in the waters of the United States; that, as petitioner is advised and believes, it has hitherto been uniformly held that the lights of all vessels are to be so cared for that they shall be visible and unobscured. 31

That the said Circuit Court of Appeals has also overlooked the effect of the finding of the Circuit Judge that on seeing the red light of the schooner the steamer's helm was immediately put hard-a-port, and the effect of such finding made at the express request of the counsel for the schooner as an admission on behalf of the schooner, and has also overlooked the direct, positive, uncontradicted and circumstantial evidence in the cause that the steamers helm was put hard-a-port immediately on the red light of the schooner being sighted. 32

Tenth.—That it was claimed on behalf of the steamer that the schooner was also in fault for omission to show a torch light as required by Section 4234 of the Revised Statutes of the United States.

That the decision of the said Circuit Court of Appeals holds that the Act of Congress of March 3, 1885, does not require torch lights to be used by vessels upon the high seas and coast waters of the United States, and that said act not only omits section 4234 of the Revised Statutes, but repeals all laws and parts of laws inconsistent with the International Rules, and that the schooner was not in fault for her failure to show a torch light. 33

That such decision overrules, as petitioner believes, all previous decisions of the Federal Courts on the subject, 34 and must stand as a precedent in all future similar cases until passed upon by this Honorable Court.

That it is also of importance that this court should pass upon the question whether, independently of the statute, it is or is not a requirement of proper seamanship that a sailing vessel should exhibit a torch light to indicate her presence and course to approaching vessels whenever safety may be conserved or promoted thereby.

Eleventh.—That the questions hereinabove stated are of gravity and importance and affect every case of admiralty and maritime jurisdiction, hereafter to be adjudicated, where the statutory lights have been allowed to be obscured by sails or other obstructions on board, 35 and that it is of the utmost importance that such questions shall be passed upon and determined by this Honorable Court.

Twelfth.—That, as petitioner is informed by counsel, the decision of said United States Circuit Court of Appeals for the Fourth Circuit is erroneous by reason of the matters above stated, and is contrary to law and contrary to the evidence and to the weight of evidence and to the facts as found by the said Circuit Court for the District of Maryland, and the same, if allowed to stand, will cause great hardship and injustice to petitioner and to all navigators and persons owning or interested in sea- 36 going vessels, who rely upon compliance by other vessels with the statutes requiring lights to be carried "of such "a character as to be visible on a dark night with a clear "atmosphere at a distance of at least two miles, and so "constructed as to show a uniform and unbroken light "over an arc of the horizon of ten points of the compass, "and so fixed as to throw the light from right ahead to "two points abaft the beam;" and requiring every sail vessel "on the approach of any steam vessel during the "night time to show a lighted torch upon that "point or quarter to which said vessel shall "be approaching;" that the amount involved is large, nearly $17,000, and the questions are of gravity and importance; that the said decision is final under the Act of Congress establishing the Circuit Courts of Appeal, the cause being one of admiralty and maritime jurisdiction, and the only remedy of petitioner is by certiorari from this Honorable Court under said act. 36a

Wherefore, petitioner prays that this Honorable Court will be pleased to require by writ of certiorari, the said cause to be certified to it by the said United States Circuit Court of Appeals for the Fourth Circuit for its review and determination pursuant to the provisions of the statute, and that thereupon, as well the petitioner as the representatives of said schooner Cassie F. Bronson, may be heard by this Court, either orally or upon brief, or both, and that this Court will thereupon make such further order or decree in the premises as justice may require. 36b

And petitioner will ever pray, &c.

HORATIO J. J. WISE,
By FOSTER & THOMSON,
his Attorneys.

FOSTER & THOMSON,
Proctors for Petitioner. 36c

UNITED STATES OF AMERICA, }
Southern District of New York. } 37

City and County of New York, ss.:

JAMES THOMSON, being duly sworn, says that he has read the foregoing petition, and knows the contents thereof, and verily believes the same to be true.

That the decision of the said Circuit Court of Appeals in not holding the said schooner in fault for the obscuration of her lights is, as deponent believes, a revolution in the law marine as hitherto laid down by the courts, and contravenes and overrules all previous decisions known to deponent in the courts of either England or America; that such obscuration has hitherto, as de- 38
ponent believes, been uniformly held to be at least contributory negligence on the part of the vessel whose lights were so obscured and said decision being final must stand as the law unless passed upon and reversed by this Honorable Court; that such decision is with reference to a matter of gravity and importance and affects the rights of all vessels, foreign and domestic, sailing within the jurisdiction of the Federal Courts.

That deponent verily believes the said Circuit Court of Appeals for the Fourth Circuit has overlooked or disregarded the evidence in said causes as to the porting of the helm when the red light was first seen, and has overlooked the finding of the Circuit Judge in that regard;
that it was not claimed by counsel for the schooner, 39
either on the oral argument before the Court or in the brief, that the helm of the steamer was not hard-a-ported when the red light was seen and before the green light was visible, and, as deponent is informed and believes, no such claim was ever put forward on behalf of the schooner; that the finding of the Circuit Judge on the subject was made upon the request of

40 counsel for the Bronson, and, if not conclusive of itself, is at least an admission on behalf of the schooner that the helm was ported immediately when the red light was seen.

That, in deponent's opinion, the said decision, if permitted to stand, will work great injustice to the petitioner and the owners of said steamer and of all other vessels who comply with the statutes, and that the application for a writ of certiorari is meritorious, and that the case is a proper one for the relief provided by the statute.

JAMES THOMSON.

Sworn to before me, this }
41 16th day of April, 1892. }
[L. S.] GIRAUD F. THOMSON,
Notary Public.

42

UNITED STATES CIRCUIT COURT OF APPEALS 43

FOR THE FOURTH CIRCUIT.

No. 1.

The British Steamship LEPANTO

ads

MYERS BENNETT, Master, and WILLIAM A. ANDERSON, Managing owner of the Schooner CASSIE F. BRONSON 44

and

HORATIO J. J. WISE, Master of the British Steamship LEPANTO,

vs.

The Schooner CASSIE F. BRONSON.

Appeal from the Circuit Court of the United States for the District of Maryland—In Admiralty.

45

Before Mr. Chief Justice FULLER and HUGHES, District Judge.

Opinion by HUGHES, *Judge.*

A collision occurred between the steamer Lepanto and the schooner C. F. Bronson, twenty-five miles south of Long Island, in the Atlantic Ocean, shortly after half-

46 past twelve o'clock on the night of the 22d–23d April, 1890, from which the schooner sustained damages assessed at about $10,000, and the steamer damages claimed to the same amount.

Libel was filed in behalf of the schooner, which was answered, and a cross-libel filed. The District Court of Maryland decreed for the libellant; the Circuit Court affirmed that decree, and the case has been appealed to this Court.

The collision occurred on a clear night; the deck officer of the steamer Lepanto described it as a "fine, very fine, starlight" night. Witnesses severally say that objects could be seen at two, three, four, five and six miles distant. The Lepanto was running, half-laden,
47 ten to eleven miles an hour, on a course S. W. half W., and was first seen by the schooner when at a distance of five or six miles. She registers 1,489 and carries 3,000 tons. Her dimensions are not given.

The Bronson is a four-masted schooner of 183 feet keel, 40 feet beam, and 2,000 registered tonnage. She was laden with 1,789 tons of coal. She was on a course N. E. by E., with all sails set, moving before a very light wind blowing from S. S. W., at a speed of two and a half miles an hour, which barely gave her steerage way. There being very little wind, her sails were "hauled out by the tackles on the port side"; were "way off on the port side"; were "drawing hardly
48 enough to keep the booms off"; "requiring tackle to be hooked on to keep the booms off." Witnesses of the Lepanto all insist that they did not see the schooner, or her red light, until within half a mile from the place, and four minutes of the time of the collision. The two vessels were approaching each other.

The course of the steamer being S. W. half W., and of the schooner N. E. by E., they were moving on intersecting lines, and the sequel proved that they were

moving in such manner that the steamer would pass 49
the intersecting point of the two courses before the
schooner reached it.

Before the collision the schooner had the steamer a point and a half on her port bow, the steamer conversely having the schooner a point and a half on her starboard bow. If their lights were in place and burning, the steamer showed her green light and the schooner her red light to the approaching vessel until the steamer crossed the course of the schooner.

The steamer was bound by the seventeenth inter-
national rule of navigation (1885), which requires in
substance that when a steamship and a sailing ship are
approaching each other on intersecting courses, the
steamship shall keep out of the way of the sailing ship, 50
and the schooner, by the twenty-second rule, which re-
quired her to keep her course.

If the schooner was not in fault as to her lights and her men on deck, and kept her course, then the presumption is that the steamer was in fault, her duty being to keep out of the way. The evidence of all the crew of the schooner in the case is so positive, clear, and consistent to the effect that her lights were in their proper places and burning brightly for hours before, and at the time of the collision, that it would be unreasonable to entertain doubts of the fact.

In every case of collision between ships, in which the
testimony of one vessel is as unanimous and positive as 51
it is in this, if it nevertheless be in fact false, there is
sure to be some physical circumstance, condition of
things, or occurrence developed in the evidence to refute
and discredit the false testimony. This sort of refuta-
tion is wholly wanting in the present instance, and it
must therefore be repeated that it would be unreasonable
to doubt the fact that the regulation lights of the
schooner were in their proper places and burning

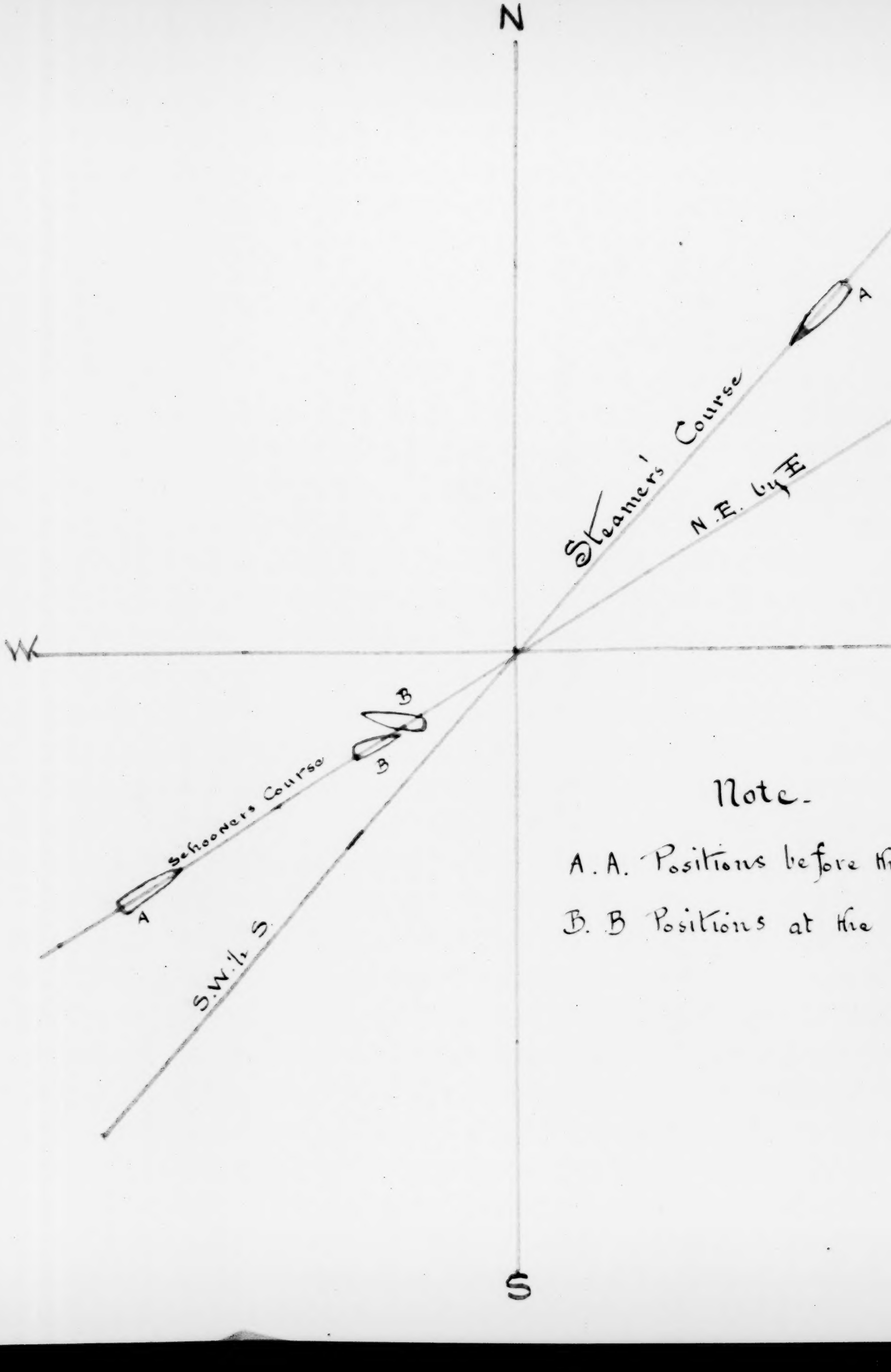
52 brightly before the collision. The matter of the flash-light is not included in this remark, and will be dealt with in the sequel.

It is true that those of the Lepanto's crew who were examined all say that they did not see the red light of the schooner until shortly before the collision; their testimony being as follows, respectively: The first officer says, "about three or four minutes before"; the third officer mentions no time, but first saw the red light "about one and a-half points off our starboard bow," "about half a mile, I should say, or a quarter of a mile" from us; Howard, the lookout, says "two or three or four minutes," "bearing a point and a-half on the starboard bow"; and Kilby, the pilot, says, "saw a red 53 light about a point and a-half on the starboard bow," "about three minutes before the collision."

It would be unreasonable to question the sincerity or truth of these statements. It must be conceded that the red light of the schooner, though in its place and burning, was not visible to these witnesses until shortly before the time, and within half a mile of the place of collision—a fact which was doubtless due to the feebleness of the breeze, and the consequent slack condition of the sails of the schooner hanging "way off on the port side," obscuring the red light.

As to the men on deck of the schooner at the time of the collision, the lookout was in his proper place; the 54 first and third officers were on duty and giving due attention to the navigation; and there was a pilot at the helm, all competent men, none of whom were at fault in the discharge of their respective duties.

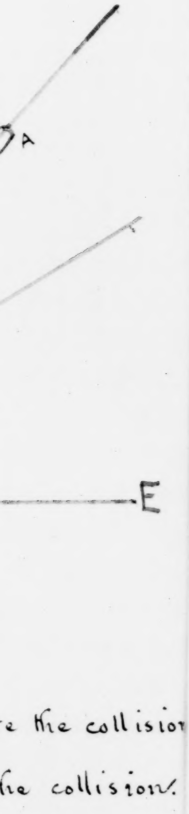
Nor can it be doubted that the schooner kept her course. Moving so slowly before a light wind as barely to be in possession of steerage way, this large four-masted schooner, fully laden, was incapable of changing her course except in the slowest manner; and the testimony proves that she made no change of helm until



Note.

A. A. Positions before th

B. B Positions at the



just before the moment of collision, when it was put hard-a-port, but with no other effect than to bring her bow to starboard about a quarter of a point. It follows from the foregoing considerations that the schooner was not in fault. 55

Was the Lepanto in fault? In order to simplify this inquiry, let two things be premised:

First.—If two vessels are approaching each other in the night on parallel courses, each passing to the right, and showing the other her left or port side and red light, and each keeping her course, they will certainly pass clear. But if one of the vessels, just as the other nears her, shuts in her red, and shows her green light—that is to say, throws herself across the bows of the other, then a collision is inevitable if the two are in close proximity; and all that the other vessel can do is to put her helm hard-a-port and throw her bow to starboard in order to lighten the concussion as much as possible. 56

Second.—But if the two vessels are approaching each other in the night on courses that intersect at an oblique angle, in such manner that one vessel will reach the point of intersection before the other, the two will clear each other if each keeps its course. The vessel reaching the intersection first, if running S. W. half W., will see the other's red light, if the latter be moving N. E. by E. until just before crossing that vessel's course, but will see her green light immediately after crossing, and if the crossing vessel then keeps on, there will be no casualty. But if this vessel, unmindful of the fact that the two courses intersect, after crossing the other's course and on seeing the green light, puts her helm hard-a-port as if she were passing the other on parallel lines, then, if she is very near the other vessel, a collision becomes imminent. See the annexed diagram. 57

58 The evidence in this record adduced in behalf of the Lepanto, although very indefinite and confusing on the vital point of the case, seems to leave no doubt that the second statement describes what occurred. The Lepanto, immediately on crossing the Bronson's course and on seeing that vessel's green light, committed the blunder of putting her helm hard-a-port, thus throwing her bow rapidly to starboard against the schooner which she had actually, though unconsciously, cleared. This manœuvre of the Lepanto would have been the proper one if the two vessels had been nearing each other on parallel lines; for, in that case, the sight of the schooner's green light would have been the announcement of an imminent collision. But they were not passing on parallel 59 lines; the Lepanto had crossed the bows of the Bronson on an intersecting course, and the sight of that vessel's green light was the signal that she had crossed in safety. If she had then continued on her course nothing would have happened, but on seeing the schooner's green light, and losing sight or in ignorance of the fact that he was on an intersecting course, her navigator made the manœuvre which was fatal in that condition of things, though it would have been proper if he had not crossed the course of the schooner.

It is true that the witnesses for the Lepanto insist that, while she still had the schooner a point and a half on her starboard bow, and was a quarter to a half mile off, and immediately on seeing the schooner's red light, 60 and several minutes before that vessel's green light appeared, she made the manœuvre of putting her helm hard-a-port.

But the Lepanto's testimony on these points cannot overcome a stubborn physical fact. A close examination of that testimony on the crucial point of the time of putting her helm a-port itself leaves the impression, notwithstanding the language of the witnesses to the contrary, that the steamer had crossed the schooner's course, and that the green light had shown itself, when the helm was put to port. But such an examination is unnecessary here; because a collision would have been physically impossible if the helm had been put hard down as described by the steamer's witnesses "three to four minutes" before the collision, when the steamer was at a distance of "a quarter to a half mile" from the schooner, and still had her "a point and a half on her starboard bow. 61

The steamer's pilot testifies with apparent pride, that she "obeyed her helm readily, very quickly," and the proposition must be absolutely rejected that a steamer thus exceptionally responsive to her wheel failed, with her helm hard-a-port, to clear a vessel on her starboard bow, more than a quarter of a mile, and three or four minutes off. 62

Given the position of a slowly moving schooner on the starboard of a steamer; given the facts, that a half laden steamer, readily and quickly obedient to her wheel, moving ten miles an hour, puts her helm hard down, and coming around, strikes the schooner with her port side; on these premises, the conclusion is irresistible, that this steamer was in very close proximity to the schooner when she put her helm hard down. In the matter of the Lepanto, the conclusion is irresistible that the schooner's green light had shown itself when the steamer's helm was put to port. 63

The collision could not have occurred if the helm had not been put down after the schooner's course had been crossed; and the steamer was in fault in putting it hard to port after that crossing, and doubtless after the schooner's green light was shown.

It is insisted, however, on behalf of the Lepanto, that her failure to discover the relative situations of the two vessels was largely owing to the fault of those on the

64 schooner in not showing a flash-light, as required by section 4234 of the Revised Statutes. It is answered, on the schooner's behalf, that in point of fact she was prepared to exhibit a flash-light, and did actually ignite it, but put it out immediately after doing so on seeing the green light of the steamer, which gave assurance that that vessel was about to cross her course and go clear.

It is needless to deal here with this issue of fact. The international rules of navigation, enacted into laws by the Act of Congress of March 3, 1885, do not require flash lights to be used by vessels upon the high seas and coast waters of the United States. Article II of those rules declares that no other lights than those mentioned in the articles of the act relating to lights shall be car-
65 ried, and none of those articles mentioned flash-lights. And section 2 of the act repeals all laws and parts of laws inconsistent with those articles. Moreover, the Act of 1885, establishing international rules for sea-going and coasting vessels, omits section 4234 of the Revised Statutes.

It follows, therefore, that if the schooner Bronson did not display a flash-light on the approach of the Lepanto, she was not in fault on that score.

The decree of the Circuit Court is affirmed, with interest and costs of the appeal to be paid by appellant.

The Chief Justice concurred.

66

UNITED STATES CIRCUIT COURT OF APPEALS, 67

FOURTH CIRCUIT.

No. 1.

HORATIO J. J. WISE, Master and Claimant of the British Steamship "Lepanto,"
Appellant,

vs.

Cross Libels Consolidated.

MYERS BENNETT and WILLIAM A. ANDERSON, Claimants of the
Schooner "Cassie F. Bronson," 68
Appellees.

Appeal from the Circuit Court of the United States for the District of Maryland.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof, it is now here ordered, ad-
judged and decreed by this Court, that the decree of
the said Circuit Court in this cause be, and the same is
hereby, affirmed with interest, and costs of the appeal
to be paid by the appellant; interest until paid at the
same rate per annum that similar decrees bear in the 69
Courts of the State of Maryland; and that this cause
be remanded to the Circuit Court of the United States
for the District of Maryland for further proceedings;
the mandate to issue after the expiration of forty days
from this date.

April 19th, 1892.

Per ROBERT W. HUGHES,
Judge.

True copy of original on file in my office.
April 22, 1892.

HENRY T. MALONEY,
Clerk.

[L.S.]

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1

THE UNITED STATES OF AMERICA, } to wit:
District of Maryland,

At a Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, begun and held at the Court House in the City of Baltimore on the first Monday of April, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and ninety-one. 2

Present—The Honorable HUGH L. BOND, Circuit Judge.

Hon. THOMAS J. MORRIS, Judge of the Maryland District.

JOHN T. ENSOR, Esquire, Attorney.

WILLIAM F. AIREY, Esquire, Marshal.

JAMES W. CHEW, Clerk.

Among other were the following proceedings, to wit:

3 MYERS BENNETT, Master, and
WILLIAM A. ANDERSON, Managing Owner of the Schooner
Cassie F. Bronson,
Libellants and Appellees,

vs.

The British Steamship "Lepanto,"
Respondent and Appellant.

HORATIO J. J. WISE, Master of
the British Steamship "Lepanto,"
Libellant and Appellant,

vs.

The Schooner Cassie F. Bronson,
4 Respondent and Appellee.

Appeal from the Circuit Court of the United States for the Fourth Circuit in and for the District of Maryland, on cross-libels, in a cause of collision consolidated.

The transcript of the record and proceedings of the District Court of the United States for the District of Maryland in the said above entitled causes lately depending therein, was filed in the Circuit Court here, on appeal from said District Court, on the first day of December 1890, which said record contains the following proceedings, to wit:

Libel of Myers Bennett, etc., 5

Filed May 5. 1890.

To the Hon. Thomas J. Morris, Judge of the District Court of the United States for the District of Maryland.

Myers Bennett of Pennsylvania, master of the schooner "Cassie F. Bronson," and William A. Anderson, of Staten Island, New York, managing owner of said schooner, for themselves and the other owners of said schooner, exhibit this libel against the British steamship "Lepanto," her engines, boats, tackle, apparel and furniture, now lying in the District of Maryland, and within the admiralty and maritime jurisdiction of this Honorable Court, and also against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime.

And thereupon they do allege and articulately propound as follows : 6

First.—That on the 15th day of April 1890, said schooner, loaded with coal, sailed from the port of Norfolk, Virginia, for the port of Boston, Massachusetts. All went well upon said voyage until the morning of the 23d day of said month, when said schooner was greatly damaged through the carelessness of those in charge of said steamship "Lepanto," in causing a collision between the two vessels in the manner hereinafter set forth.

Second.—Between the hours of twelve and half-past twelve of the said morning, when the said schooner had reached a point on said voyage off the coast of Long Island and in the vicinity of Shinnecock Light, and was on a course northeast by east, with the wind from the south southwest, but very gentle, a bright light was seen ahead, a considerable distance off, on a vessel which was crossing the Bronson's course from starboard to

7 port; and afterwards another bright light was seen about one and a half points on her port bow and at a greater distance than the light first seen. Both of said lights were reported on the Bronson and were visible at the same time to, and carefully watched by those in charge of her deck. The steamer bearing the light first seen and reported as aforesaid, crossed the course of the Bronson to port from one-half to one mile away. The steamer bearing the other light, seen and reported as aforesaid, kept approaching the Bronson, gradually drawing ahead, and then across on her starboard bow until her green light bore about one point on the Bronson's starboard bow. When in that position and less than half a mile away, the steamer's wheel was put hard-a-port, and her green light was shut out, her red light opened up, and her course so changed that the steamer was run across the course and under the bows of the schooner, so that the two vessels came violently together, the Bronson
8 striking the steamer on the port quarter and causing damage to the Bronson as hereinafter particularly set forth.

Third.—At the time said steamer's light was first seen the Bronson had her regulation lights properly set and burning brightly, as they had been during the whole night up to the time of the collision; a competent and vigilant officer was in charge of her deck, a competent and vigilant seaman was properly stationed on the forecastle head, diligently performing all the duties required of him in his position, and another at the wheel, also performing faithfully all his duties. When said lights were reported on the Bronson she was on her course northeast by east, and continued and passed to port, and while said first steamer crossed her course and passed to port, and while said second steamer drew near and upon said Bronson's starboard bow as above set forth, and also while said second

steamer changed her course under a hard-a-port 9
helm and attempted to cross the Bronson's course
from starboard to port. When the said change had
been made, and it became evident to those on the
Bronson that a collision was inevitable between said
steamer and schooner, and not until then, the helm
of the latter was put hard-a-port for the purpose of
running under the steamer's stern, if possible, and
of easing the blow, but on account of the nearness
of the steamer and the slow progress of the schooner,
owing to the light wind prevailing, but little change
was made in the schooner's course, and the effect
of her helm being put hard-a-port was simply to
make the force of the blow lighter than it otherwise
would have been.

Fourth.—After the said collision those on the
Bronson lowered their boat, at the request of those
on the steamer, and went to their assistance, but,
when they got near the steamer, they were simply
asked the name of the schooner which was correctly 10
given, but the name of the steamer those on board
of her refused to give, and the Bronson's boat was
rowed under the steamer's stern, and her name was
made out, with the aid of the lantern, to be the
Lepanto, of Hull, England. The wreck was then
cleared away on the Bronson, her masts stayed, she
was headed on her course with shortened after sail,
and reached Vineyard Haven the next morning
where she took a tug and towed to Boston, arriving
there on April 27th. 1890.

Fifth.—By the said collision the Bronson's bowsprit, jibboom, rigging and everything forward were carried away, her ends and topgallant forecastle started, her windlass, sampson post and both cat heads broken, and she was otherwise seriously injured, and thereby the master and owners of the Bronson have suffered damages amounting to eight thousand dollars, to recover which this suit is brought.

11 *Sixth.*—The said collision was caused solely by the negligence and carelessness of those in charge of the Lepanto, in failing to see the Bronson's light, which were burning brightly, in attempting to change the course of their vessel when she was on a course which would have carried her clear of the Bronson, in failing to take reasonable steps to avoid the Bronson, in running under the bows of the Bronson when she was dangerously near, in neglecting to slacken their vessel's speed, and in other respects to be more fully set forth at that trial; while those in charge of the Bronson were without fault and in no way contributed to said collision.

Eighth.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the libellants pray that process in due form of law may issue against the said steamship Lepanto, her engines, boats, tackle, apparel and
12 furniture, and against all persons lawfully intervening for their interest therein, and that this Honorable Court will pronounce for their aforesaid claim, decree the payment thereof with costs, and grant them such other and further relief as their cause may require.

Robert H. Smith,
Proctor for Libellants.

Answer.

Filed May 13. 1890.

To the Honorable Thomas J. Morris, Judge of the District Court of the United States for the District of Maryland.

The claim of Horatio J. J. Wise to the British

Steamship "Lepanto," her engines, boats, tackle, 13
apparel and furniture, against which Myers Bennett
and William A. Anderson have recently filed a libel
in this Honorable Court, and the answer of the said
Horatio J. J. Wise to said libel, alleges and articulately
propounds, as follows, to wit :

First.—That the said steamship, her engines, boats, tackle, apparel and furniture, were, at the time of their arrest, in the possession of the said Horatio J. J. Wise, as master of said steamship ; that he is the lawful bailee thereof, for her owners ; that her owners, on whose behalf this claim is made, are her true and *bona fide* owners, and that no other person is owner thereof ; and that he, the said Horatio J. J. Wise, is duly authorized by said owners to make claim to said property.

Second.—He admits that a collision occurred
between said steamship and the schooner "Cassie
F. Bronson," off the coast of Long Island, and in
the vicinity of Shinnecock Light, on the morning 14
of the 23d of April 1890. But he denies that said
collision was, in any degree, the result of fault on
the part of those in charge of said steamship. He
alleges that said collision was altogether the result
of fault on the part of those in charge of said
schooner ; and that it occurred as hereinafter
alleged.

Third.—That said steamship, bound on a voyage from Antwerp, via Boston, to Baltimore, discharged part of her cargo and took on some other cargo at Boston, and left there on the morning of April 22d. 1890 for Baltimore. At twelve o'clock midnight of said day, while she was on said voyage and off the coast of Long Island, the watch of her first officer, composed of the first and third officers and five able seamen, began, and said officers and seamen, respectively, were assigned to and assumed the position and duties hereinafter stated. On her

15 upper bridge were her first officer, in charge of her
navigation, and for the purpose of looking for and
avoiding approaching or neighboring vessels and
dangers of all kinds ; her third officer, for the purpose
of aiding her first officer in the discharge of
those duties ; and an able seaman at her wheel, to
steer her, with the aid of steam machinery connected
with it for that purpose ; on the deck below,
an able seaman was on her forecastle head,
near her bow, as lookout, with no other duty to perform ;
and three other able seamen, the balance of
that watch, were on said deck, ready for the performance
of any duty that might be required of
them. All of these officers and seamen were competent
and experienced, and diligently performed
their respective duties from the beginning of their
said watch, up to and until after the collision hereinafter
referred to, which occurred during said
watch. The night was dark but clear. The wind was
light, between South and West. The said steamship
16 was then,and until the change hereinafter mentioned
kept on a course S. W. ½ S., and steaming at the
rate of 10 to 11 knots per hour. Although said
first and third officers and said look-out diligently
and constantly discharged their respective duties,
and looked diligently and constantly in every
direction, but especially ahead and off both her
bows, none of them and no one else on board of her
could see anything to attract their attention until
about 45 minutes after twelve o'clock on the
morning of the 23d April, when her first and
third officers almost simultaneously saw, over their
starboard bow, a dark object, without any light
visible to them, which turned out afterwards to be
the schooner "Cassie F. Bronson." Not being
able to discover on her any light, they supposed
her to be a vessel going in the same direction as
said steamship, and for the purpose of assuring
themselves as to her course, they both looked at
her carefully, with as well as without glasses, and

neither of them, for some time, could see on her any light whatever. While they were so looking at her, a bright red light on her suddenly appeared, about 1½ points off the starboard bow of said steamship. The helm of said steamship was immediately put hard-a-port. Almost simultaneously with the giving of the order for said change of helm, the lookout of said steamship saw and reported said red light bearing, as said first and third officers had seen it, about 1½ points off the starboard bow of said steamship. Under said hard-a-port wheel, the head of said steamship fell off to starboard until said red light was about 3 points off her port bow. Up to that time no one on board said steamship had been able to see any green light on said schooner. Suddenly said red light was shut in and a bright green light on said schooner was brought into view of those on board of said steamship, and, in three or four minutes after said red light was first seen by or visible to any one on board said steamship, said schooner struck said steamship on her port side, and inflicted on her very serious injuries.

17

18

Fourth.—That no danger of collision was or could have been apparent to any one on board of said steamship until said green light appeared and said red light was shut in, and if said steamship had then attempted to slacken her speed, or stop, or reverse, she would have been struck further forward than she was, near her engine room, her engines would probably have been injured or destroyed, and the damage to both vessels would have been greater than it was.

Fifth.—He denies that, after said collision, any one on board said steamship refused to give her name to those in charge of said schooner; but alleges that they did give it in response to an inquiry therefor; and that they inquired of said schooner whether she needed assistance or not, and

19 that said steamship did not leave her until assured that they needed none.

Sixth.—When said steamship arrived in Baltimore she was under a contract to carry cattle; and by reason of said collision she was exposed to the expense necessary to repair the injuries resulting therefrom; to loss of her own time; to expenses while undergoing repairs, and expense of keeping, while said injuries were being repaired, the cattle, which were ready to be shipped on her, resulting in damages to those on whose behalf this answer is filed, amounting, in the aggregate, as far as this respondent can estimate them, to ten thousand dollars ($10,000).

Seventh.—That all and singular the premises are true.

Wherefore, the respondent prays that said libel be dismissed, with costs.

20 JOHN H. THOMAS,
Proctor for Respondent.

Affidavit waived.
ROBT. H. SMITH,
Proctor for Libellant.

CROSS-LIBEL OF HORATIO J. J. WISE.

Filed May 13. 1890.

To the Honorable THOMAS J. MORRIS, Judge of the District Court of the United States, for the District of Maryland.

The cross-libel of Horatio J. J. Wise, master of the steamship "Lepanto," against the schooner

"Cassie F. Bronson," her boats, tackle, apparel 21
and furniture, in a cause of collision, civil and
maritime, alleges and articulately propounds as follows, to wit:

First.—That the libellant is, and at the time of the collision hereinafter mentioned, was master of the said steamship "Lepanto."

Second.—That the said steamship, bound on a voyage from Antwerp, via Boston, to Baltimore, discharged part of her cargo and took on some other cargo at Boston, and left there on the morning of April 22d. 1890, for Baltimore. At twelve o'clock, midnight, of said day, while she was on said voyage, and off the coast of Long Island, the watch of her first officer, composed of the first and third officers and five able seamen, began, and said officers and seamen, respectively, were assigned to and assumed the positions and duties hereinafter stated. On her upper bridge were her first officer
in charge of her navigation and for the purpose of 22
looking for and avoiding approaching and neighboring vessels and dangers of all kinds, her third officer, for the purpose of aiding her first officer in the discharge of those duties, and an able seaman at her wheel to steer her, with the aid of steam machinery, connected with it for that purpose; on the deck below, an able seaman was on her forecastle head, near her bow, as lookout, with no other duty to perform, and three other able seamen, the balance of that watch, were on said deck, ready for the performance of any duty that might be required of them. All of these officers and seamen were competent and experienced and diligently performed their respective duties from the beginning of their said watch, up to and until after the collision hereinafter referred to, which occurred during said watch The night was dark but clear. The wind was light, between south and west. The said steamship was then, and until the change

23 hereinafter mentioned, kept on a course S. W. ½ S., and steaming at the rate of 10 or 11 knots per hour. Although said first and third officers and said lookout diligently and constantly discharged their respective duties, and looked diligently and constantly in every direction, but especially ahead and off both her bows, none of them and no one else on board of her could see anything to attract their attention, until about 45 minutes after twelve o'clock on the morning of the 23d April, when her first and third officers almost simultaneously saw over their starboard bow a dark object, without any light visible to them, which turned out afterward to be the schooner "Cassie F. Bronson." Not being able to discover on her any light, they supposed her to be a vessel going in the same direction as said steamship, and for the purpose of assuring themselves as to her course they both looked at her carefully with, as well as without, glasses, and neither of them for some time could 24 see on her any light whatever. While they were so looking at her, a bright, red light on her suddenly appeared, about 1½ points off the starboard bow of said steamship. The helm of said steamship was immediately put hard-a-port. Almost simultaneously with the giving of the order for said change of helm the lookout of said steamship saw and reported said red light bearing, as said first and third officers had seen it, about 1½ points off the starboard bow of said steamship. Under said hard-a-port wheel the head of said steamship fell off to starboard, until said red light was about 3 points off her port bow. Up to that time no one on board said steamship had been able to see any green light on said schooner. Suddenly said red light was shut in and a bright green light on said schooner was brought into view of those on board of said steamship, and in three or four minutes after said red light was first seen by or visible to any one on board said steamship said schooner struck said

steamship on her port side and inflicted on her very serious injuries. 25

Third.—That said collision resulted entirely from negligence, mismanagement, want of seamanship and skill on the part of those in charge of said schooner.

Fourth.—When said steamship arrived in Baltimore she was under a contract to carry cattle, and by reason of said collision she was exposed to expense necessary to repair the injuries resulting therefrom, to loss of her own time, to expenses while undergoing repairs and expense of keeping, while said repairs were being made, the cattle which were ready to be shipped on her, resulting in damages to those on whose behalf this libel is filed, amounting in the aggregate, as far as this libellant can estimate them, to ten thousand dollars ($10,000), and the libellant institutes this suit, on behalf of. the owners of said steamship, to recover said damages. 26

Fifth.—That Myers Bennett, master, and William A. Anderson, managing owner, of said schooner "Cassie F. Bronson," have filed their libel, which is now pending in this Honorable Court, against said steamship "Lepanto," upon a claim, which is a counterclaim to that sought to be enforced in this proceeding, arising out of the same cause of action for which this libel is filed.

Sixth.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the libellant prays that process, in due form of law, may issue against the said schooner "Cassie F. Bronson," her boats, tackle, apparel and furniture, requiring all persons who have a claim to or any interest in said property, as

27 owners or otherwise, to appear and show cause why a decree should not be rendered against said schooner, her boats, tackle, apparel and furniture, for the libellant's aforesaid claim and costs; that stipulation may be required of them in the usual form and amount to respond to said damages and costs; that all proceedings upon the libel of said Myers Bennett and William A. Anderson shall be stayed until such security shall be given, and that the libellant may have such other and further relief in the premises as he may require

JOHN H. THOMAS,
Proctor for Libellant.

INTERLOCUTORY DECREE. FILED JUNE 26. 1890.

IN THE DISTRICT COURT OF THE UNITED STATES,
28 FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT and others
vs.
The Steamship "LEPANTO."

HORATIO J. J. WISE
vs.
The Schooner "C. F. BRONSON."

These causes having been consolidated and tried together, the libels, answers and other proceedings read and considered, and it appearing to the Court that the schooner "Cassie F. Bronson" was without fault, and that the steamship "Lepanto" was in fault and responsible for the collision mentioned in the proceedings, IT IS ADJUDGED, ORDERED AND DECREED by the Court this 26th day of June A. D. 1890, that the libellants Myers Bennett, master, and William A. Anderson, managing owner, recover against the stipulators for the steamship "Lepanto" the amount of damages suffered by the master and owners of the schooner "Cassie F. Bronson," on account of the collision aforesaid, together with their costs, and that the causes be referred to Robert Lyon Rogers, Esq., a Commissioner of this Court, to ascertain the amount of said damages and that he report the same to this Court with all convenient speed. 29

[Signed.] THOS. J. MORRIS,
District Judge.

FINAL DECREE. FILED NOV. 7. 1890.

IN THE DISTRICT COURT OF THE UNITED STATES, 30

FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT and WILLIAM A. ANDERSON

vs.

The Steamship LEPANTO

and

HORATIO J. J. WISE

vs.

Schooner CASSIE F. BRONSON.

These cases having been consolidated and a decree having being passed on the 26th day of June 1890, 31 in favor of Myers Bennett and William A. Anderson, libellants, and referring the cases to Robert Lyon Rogers, Esq., a Commissioner of this Court, to ascertain the amount of damages suffered by said Bennett and Anderson and report the same to this Court, and the said Robert Lyon Rogers having made his report in accordance with said decree in which he ascertains that said damages amount to ten thousand and one dollars and thirty-two cents ($10,001.32).

It is therefore, ADJUDGED, ORDERED AND DECREED by the Court this 7th day of November 1890, that Henry Steffens and John H. Hugill, the stipulators for the steamship "Lepanto," pay to Myers Bennett and William A. Anderson, libellants, or their proctor, the sum of ten thousand dollars and all costs, including a fee of $25 to the Master, to be taxed in the above cases within ten days from the date of this decree, with interest on said $10,000, from the expiration of said ten days; and
32 that the libel of Horatio J. J. Wise be and the same is hereby dismissed, with costs.

(Signed,) THOS. J. MORRIS,
District Judge.

From which said decree the claimant of the said steamship "Lepanto," by his proctor, in open Court, here prays an appeal to the Circuit Court of the United States for the District of Maryland, and it is granted him.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereto relating, be transmitted to the Circuit Court of the United states for the District of Maryland, and the same is transmitted accordingly.

PROCEEDINGS OF THE CIRCUIT COURT. 33

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Filed June 30. 1891.

IN THE UNITED STATES CIRCUIT COURT.

In Admiralty.

MYERS BENNETT (Master) and WM. A. ANDERSON (Managing Owner of the Schooner "CASSIE F. BRONSON")

vs.

The British Steamship "LEPANTO." 34

HORATIO J. J. WISE (Master)

vs.

The Schooner "CASSIE F. BRONSON."

FINDINGS OF FACTS.

1. About 12:45 A. M. on the 23d day of April 1891, the four-masted schooner "Cassie F. Bronson" came in collision with the British steamship "Lepanto" in the Atlantic Ocean off the coast of Long Island.

2. At the time of the collision the schooner had

35 a cargo of 1789 tons of coal on board, and was bound on a voyage from Norfolk, Virginia, to Boston, Massachusetts, and the steamship was bound on a voyage from Antwerp to Baltimore *via* Boston, having discharged part of her cargo at Boston and taken on some other cargo.

3. The night was clear, the stars shining and objects without lights could be seen at a distance of a mile. The wind was light from the S. S. W.

4. The schooner was making between two and three knots an hour, and the steamer between ten and eleven knots. The course of the schooner was N. E. by E., and that of the steamer S. W. ½ S.

5. The master of the schooner, with the second mate and two able seamen, came on duty shortly after midnight. The master was in charge of the navigation, and was assisted by the mate; an able seaman was on the forecastle head looking out, and another able seaman at the wheel. She had her regulation lights properly set, and they were burning brightly. 36

6. About half-past eleven o'clock the bright light of a steamer was reported bearing about three points on the schooner's starboard bow, and about five or six miles off. About five minutes of twelve, the bright light of another steamer was reported, bearing on the schooner's port bow and about six miles distant. These lights were reported to the watch who came on duty soon after midnight. The light first reported was then nearly ahead and between one and two miles off. The red light on the same steamer was then visible. This steamer crossed the schooner's course, and passed on her port side at the distance of about half a mile. The other steamer seemed to be gradually drawing more ahead and nearer to the schooner, showing only her bright light. The master of the schooner, not being able to tell how this steamer was heading, directed the second mate to show the torch. The

second mate went up on the forecastle head, lit the torch and held it up. Just then the lookout reported the steamer's green light, and the torch was immediately put out. The steamer was then about half a point on the port bow and distant between one and a half and two miles. She continued to show her bright and green lights until she was about two points on the steamer's starboard bow, and about a quarter of a mile distant; when in that position she changed her course to the westward, first showing both her side lights, then shutting in her green light, and showing only her red light, and ran across the schooner's course. Seeing that a collision was inevitable, the master of the schooner ordered her helm to be put hard-a port in order to diminish the force of the blow, but on account of the slow rate of speed she was making, her course was only changed about a quarter of a point to starboard. The two vessels came together, the schooner striking the steamer on the port quarter and receiving very considerable damage. 37

38 7. The watch of the first officer of the steamer, consisting of two officers and five able seamen, came on duty at midnight. The two officers and one able seaman went off the upper bridge, the officers to take charge of the navigation and the seamen to steer. An able seaman went on the forecastle head to perform the duties of a lookout. No lights or vessels were seen by any of the steamer's watch until 12.45 A. M., when the red light of the schooner "Cassie F. Bronson" was first seen by the officers on the bridge and then by the lookout about one and a half points on the steamer's starboard bow, about a quarter of a mile distant; her helm was immediately put hard-a-port and her head fell off to starboard so that she was heading about W. ½ N. at the time of the collision. The engines were stopped after the collision.

8. When about a mile off and before the collision those in charge of the steamer saw a large black ob-

39 ject ahead or nearly so, but not seeing any lights they were unable to make out what kind of vessel it was. The steamer did not slacken her speed, however, and if this was the steamer first seen from the schooner and was between the schooner and the "Lepanto" obscuring the schooner's lights, which though suggested we do not find as a fact, the steamer "Lepanto" was in fault in not slackening her speed until she was able to discover what the large black object in front of her was, and what was the condition of vessels which might be on the other side of it, whose lights in all probability it obscured.

9. The collision was due solely to the negligence of those in charge of the steamer in their failing to see the schooner's red light sooner, when it was burning brightly and visible to them, and in their changing the course of the steamer so as to cross the course of the schooner and bring about the collision.

40

Conclusions of Law.

1. That the "Lepanto" was solely in fault.

2. That those in charge of the "Lepanto" were in fault in not keeping a lookout and seeing the "Bronson" sooner.

3. That those in charge of the "Lepanto" were in fault for putting her wheel hard-a-port and in that way bringing about the collision.

4. That the libellants, Myers Bennett, master and William A. Anderson, managing owner of the schooner "Cassie F. Bronson," are entitled to a decree for their damages caused by the collision with interest from the 7th day of November 1890, and all their costs, and the libel of Horatio J. J. Wise, master, against the schooner "Cassie F.

Bronson" should be dismissed with costs to the 41
claimants of the "Bronson". A decree will be signed to that effect.

HUGH L. BOND,
Cr. Judge.

FINAL DECREE

Filed June 30 1891.

IN THE UNITED STATES CIRCUIT COURT

FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT, Master *et al.*

vs.

THE STEAMSHIP "LEPANTO". 42

HORATIO J. J. WISE, Master,

vs.

THE SCHOONER "CASSIE F. BRONSON."

APPEAL IN ADMIRALTY.

These causes having been consolidated and argued by the proctors of the respective parties, and the libels, answers and other proceedings having been read and considered,

IT IS ADJUDGED, ORDERED AND DECREED by the Court this 30th day of June 1891, that the decree of the District Court be and the same is hereby affirmed, with costs of the District Court and of this Court.

43 IT IS FURTHER ADJUDGED, ORDERED AND DECREED that Henry Steffens and John H. Hugill, the stipulators and sureties on the appeal bond, within ten days from the date hereof, pay to Myers Bennett, master, and William A. Anderson, managing owner, or their proctor the sum of ten thousand three hundred and sixty-one dollars and sixty-two cents, with interest on said sum from the expiration of said ten days, and all costs taxed in this case in the District Court and in this Court.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that libel of Horatio J. J. Wise, master, be and the same is hereby dismissed with costs.

HUGH L. BOND,
Cr. Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ASKED FOR ON BEHALF OF THE APPELLANT.

44 Filed 11 July 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT, *et al.*,
vs.
THE STEAMSHIP "LEPANTO."

HORATIO J. J. WISE
vs.
THE SCHOONER "CASSIE F. BRONSON."

John H. Thomas, one of the proctors for the owners and claimants of the steamship "Lepanto," 45 and for Horatio J. J. Wise, respondent in the case first mentioned above, and libellant in the case secondly mentioned above, prays the Court to adopt the following additional findings of fact and conclusions of law. Said propositions are proposed as a whole, and each of them is also proposed separately with the same force and effect as if presented and asked for separately.

FINDINGS OF FACTS BY THE COURT.

1. The British steamship "Lepanto," of 1489 registered tonnage, with a miscellaneous cargo, on a voyage from Boston to Baltimore, and the four masted schooner "Cassie F. Bronson," 133 feet long, with a cargo of 1,789 tons of coal, on a voyage from Norfolk to Boston, came into collision with each other about twenty-five miles southeast of Shinnecock Light, off Long Island, after midnight, 46 on the morning of April 23d 1890.

2. The collision occurred about 12:30 o'clock, by the clock of the schooner, and about 12:48 o'clock by the clock of the steamer.

3. Promptly at 12 o'clock midnight, on the 22d day of April, the watch of the first officer of the steamer, composed of her first officer and third officer, and five able seamen, went on duty, and each of them was assigned to and assumed his appropriate position and duties, as follows: On her upper bridge were her first officer, in charge of her navigation, and for the purpose of looking for and avoiding approaching and neighboring vessels and dangers of all kinds, her third officer, for the purpose of looking out and aiding her first officer in the discharge of his duties, and an able seaman at the wheel to steer her, with the aid of steam machinery connected with it for that purpose. On the main deck below, an able seaman was on her forecastle

47 head, near her bow, acting as look-out, with no other duty to perform; and three other able seamen, the balance of that watch, were on said deck, ready for the performance of any duty that might be required of them. All of said officers and men were competent for, and experienced in, their respective duties, and performed them diligently, from the beginning of their watch up to and until after said collision, and as long as anything could be done for the safety of either vessel, or of any person or cargo on board of either.

4. All of the regulation lights of said steamer were burning brightly and properly hung. The night was dark but clear. The wind was light, between S. and S W. The "Lepanto" was, during said watch, and until the change in her course hereinafter mentioned, kept on a course S. W. ½ S., and steaming at the rate of ten or eleven knots per hour. Although said first and third officers and said lookout, diligently and constantly
48 discharged their respective duties, and looked diligently and constantly in every direction, but especially ahead and off both her bows, none of them, and no one else on board of her, saw anything to attract their attention until about forty-five minutes after twelve, on the morning of the 23d April, when her first and third officers almost simultaneously saw, over their starboard bow, a dark object, without any light visible to them, which turned out afterwards to be the schooner "Cassie F. Bronson." Not being able to discover on her any light, they supposed her to be a vessel going in the same direction as said steamship. For the purpose of assuring themselves as to her course, they both looked at her carefully with as well as without glasses, and neither of them, for some time, could see on her any light whatever. While they were so looking at her, a bright red light, on her, suddenly appeared, about one a half points off the starboard bow of said steamship. The helm of

said steamship was immediately put hard-a-port. 49
Almost simultaneously with the giving of the order for said change of helm, the look-out of said steamship saw and reported said red light, bearing as said first and third officers had seen it, about one and a half points off the starboard bow of said steamship. Under said hard-a-port wheel, the head of said steamship fell off to starboard until said red light was about three points off her port bow. Up to that time no one on board said steamship had been able to see any green light on said schooner. Suddenly said red light was shut in, and a bright green light on said schooner was brought into view of those on board of said steamship, and in three or four minutes after said red light was first seen by or visible to any one on board of said steamship, said schooner struck said steamship on her port quarter, abaft her bridge, and inflicted on her very serious injuries. The "Lepanto," under her hard-a-port wheel, fell off from S. W. ½ S. to W. ½ N., five points to starboard before the collision. 50

5. The midnight watch of the "Bronson" did not go on deck until 12:15 by her clock. She was heading on a course N. E. by E.; the wind was light, from S. S. W., and her sails were on her port side when the vessels were first visible to each other. For some time before the collision, another steamer, crossing the track of the "Bronson," from east to west, on a course almost opposite to hers, intervened between her and the "Lepanto." The lights of the schooner were invisible to those on board the "Lepanto," either by reason of this intervention, or by reason of something, on board of the schooner, until the red light became visible. The steering gear of said schooner was so rigged that putting her wheel hard-a-port, put her helm hard-astarboard and turned her head to port. When the "Lepanto" and "Bronson" were very near together, the schooner, showing to the "Lepanto" only her red light, over the port bow of the "Le-

51 panto," the wheel of the "Cassie F. Bronson" was put hard-a-port, her helm hard-a starboard, and her head fell to port, so as to shut out her red and show her green light; and to cause her to head across the track of the "Lepanto" and to strike the "Lepanto" on her port quarter, abaft her bridge, inflicting on her serious damage.

6. When the red light of the schooner was shut out from and her green light brought into view of those on board the "Lepanto," if the machinery of the "Lepanto" had been stopped or reversed, she would have been struck amidships, opposite her engine room, and the damages to her would have been much more serious than they were. The only chance of the "Lepanto" escaping a collision, or lessening the consequences thereof, was to proceed as she did, at full speed under her hard-a-port wheel.

7. The first and third officers and the look-out of the "Lepanto" saw the side lights of the "Cassie F. Bronson" as soon as they were visible to any
52 one on board of her. After they saw her red light they did everything that could have been done to avoid the collision, and to lessen the consequences of it.

8. Every possible precaution and means to avoid the collision were taken by those in charge of the "Lepanto," and by all who were on board of her.

9. The collision occurred by reason of the wheel of the "Cassie F. Bronson" having been improperly put hard-a-port, and her helm thereby put hard-astarboard, when the vessels were about to pass each other in safety, and were too near together for the consequences of that error to be avoided by anything which could be done on board the "Lepanto."

Findings of Law by the Court.

1. The collision having occurred without any

fault on the part of those in charge of the "Lepanto" or of any one on duty on board of her, the stipulators for her are not responsible for the damages resulting therefrom. 53

2. The collision having been caused by the porting of the wheel and the consequent starboarding of the helm of the "Bronson," the stipulators for her are liable for the damages to the owners of the "Lepanto" resulting therefrom.

ADDITIONAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. Filed July 11. 1891.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT, *et al.*,

vs.

THE BRITISH STEAMSHIP LEPANTO etc. 54

HORATIO J. J. WISE

vs.

THE SCHOONER CASSIE F. BRONSON.

The following additional findings of fact and conclusions of law are proposed by Foster & Thomson for and on behalf of the steamship Lepanto, etc., in the above entitled cross-causes, and each proposition therein is proposed separately with the same force and effect as though separately and distinctly numbered.

FINDINGS OF FACT.

1.—All the officers and men of the Lepanto com-

55 posing the watch of the first officer at the time of the collision were competent for and experienced in the discharge of their respective duties.

2.—The said officers and men performed their respective duties diligently.

3. The said officers and men performed their respective duties diligently up to the time the Bronson was sighted.

4.—The "Lepanto" had her regulation lights properly set and they were burning brightly.

5.—The lookout on the Lepanto was a competent and experienced able seaman and performed his duties diligently.

6.—Those on board the "Lepanto" kept a diligent lookout, and were competent and sufficient for the purpose.

7.—Those on board the "Lepanto" saw nothing
56 until about 12:45 A.M., steamer's time, when both the first and third officers observed simultaneously a black object about a point and a half off the starboard bow and distant about half a mile.

8.—The first and third officers examined said black object both with the naked eye and with night glasses but could discover no light thereon.

9.—The black object so far as could be ascertained by those on the "Lepanto" was apparently a sailing vessel going in the same general direction as the Lepanto.

10.—Had the black object been the stern of a sailing vessel sailing upon substantially the same course as the "Lepanto" the steamer would not have required to slow or stop, but to pass her on one side or the other.

11.—The "Lepanto" continued on her course, the first and third officers continuing to examine the black object through the glasses and with the naked eye to ascertain her character. 57

12.—While so examining the black object a red light suddenly appeared thereon, about 1½ points on the "Lepanto's" starboard bow.

13.—The said red light opened out in a position where it would have been visible to those on the "Lepanto" when the black object was first sighted, if it it had been there and not obscured.

14.—Said red light was seen almost simultaneously by the first and third officers and the helm of the "Lepanto" ordered hard-a port immediately. Simultaneously with the giving of the order the light was reported by the "Lepanto's" lookout.

15.—The helm of the Lepanto is controlled by steam steering gear. The quartermaster in charge of the wheel obeyed the order to hard-a-port immediately and the helm of the "Lepanto" was put hard-a-port. 58

16.—Under the hard-a port helm the bow of the Lepanto fell off to starboard until the red light was about three points off the Lepanto's port bow.

17. If the said black object had been in the position and on the course indicated to the "Lepanto" by the red light, the collision would not have occurred.

18. Up to the time said red light was brought three points off the "Lepanto's" port bow, no one on the "Lepanto" had been able to see any green light thereon.

19 When the red light on the black object had been brought three points on the port bow of the "Lepanto" it suddenly shut or closed in and a bright green light was brought into the view of those on the "Lepanto."

20. If said green light had been in the same posi-

59 tion all the time and not obscured it would have been visible to those on the "Lepanto," and effectual measures could have been taken to avoid collision.

21. When said green light became visible to those on the "Lepanto" it was too late to take any measures to avoid collision, and in a few seconds the black object, which subsequently proved to be the schooner "Cassie F. Bronson" struck the "Lepanto" on her port quarter inflicting serious injury.

22. The shutting in of the red light and the opening out of the green light were caused by the wheel of the "Bronson" being put hard-a-port, bringing her helm to starboard and causing her to head across the course of the "Lepanto."

23. The course of the "Bronson" was changed while her red light was visible to the "Lepanto" and three points off the "Lepanto's port bow.

60

24. If when the green light of the "Bronson" became visible to those on the "Lepanto" the engines of the Lepanto had been stopped or reversed the "Bronson" would have struck her about amidships opposite the engine room and the damage to the "Lepanto" would probably have been greater.

25. Those on the Bronson saw the "Lepanto" and were aware of her character, position and course when the "Lepanto" was about four to six miles distant.

26. No measures were taken by those on the "Bronson" to avoid the collision.

27. When the vessels were approaching each other and so close as to involve risk of collision, the master of the "Bronson" ordered the second mate to show a torch light.

28. The second mate of the Bronson got out the

torch light and was about to show it, about to flash it when the captain ordered him to never mind. 61

29. When the captain gave the second mate the order to never mind, the torch had burned hardly the sixteenth part of a second; he just touched the match to it and stuck it right into his can and put it out.

30. When those on the "Lepanto" first sighted the "Bronson," the lights of the "Bronson" were so obscured, if lighted, as not to be visible to them.

31. If the lights on the "Bronson" had been visible to those on the "Lepanto" and not obscured, when the "Bronson" was first sighted, the collision would not have occurred.

32. The first and third officers of the "Lepanto" and her lookout saw the lights of the "Bronson" as soon as they were visible to any one on board of the "Lepanto." After they saw the red light they did all that could be done to avoid collision and lessen its consequences. 62

33. Every possible measure to avoid collision was taken by those on board the "Lepanto."

CONCLUSIONS OF LAW.

1. The "Lepanto" was without fault in the premises.

2. The collision was solely the fault of the "Bronson."

3. The "Bronson" was in fault for not having her lights burning, or if burning obscured so as to be invisible to those on the "Lepanto."

4. The "Bronson" was in fault for not showing a torch light as required by Section 4234 of the Revised Statutes of the United States.

63 5. The proceedings of those on the "Bronson" with reference to the torch light were not a compliance with Section 4234 of the U. S. Revised Statutes.

6. The "Bronson" was in fault for taking no measures to avoid collision.

7. The "Bronson" was in fault for changing her course while her red light was visible to those on the "Lepanto."

8. The requirement of Section 4234 of the Revised Statutes of the United States is without distinction as to the nationality of the steamer.

9. The circumstances of the case were such that the exhibition of a torch light or other indication of her presence was an obligation of reasonable prudence and diligence on the part of the "Bronson."

64 10. Those on watch on the "Lepanto" having been unable to see any light on the "Bronson" during a considerable period when a light should have been seen, the fault is to be ascribed to the "Bronson" even when the precise reason why the light was not seen does not appear.

11. The night having been dark but clear the lights of the "Bronson" should have been clearly visible to the "Lepanto," and those on the "Lepanto" having been unable to see any lights although watching for them, the presumption is that the "Bronson's" lights were either not burning or were obscured.

EXCEPTIONS. 65

Filed July 28. 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

In Admiralty.

MYERS BENNETT (Master), *et al.*, &c.,

vs.

THE BRITISH STEAMSHIP LEPANTO, her Engines, etc.; HORATIO J. J. WISE (Master),
Claimant and Appellant.

HORATIO J. J. WISE (Master), &c., 66
Libellant and Appellant,

vs.

THE SCHOONER CASSIE F. BRONSON, her Tackle, etc.

The said Horatio J. J. Wise, claimant and cross-libellant, appellant, hereby excepts separately to the findings of fact and conclusions of law made in the above entitled cross-causes as unsustained by any proper or legal evidence, and being in opposition to the facts as proved by the testimony presented in said causes, and as contrary to law, as follows:

1. He excepts to so much of the first finding of fact as finds that the collision occurred at 12:45 A. M.

67 2. He excepts to so much of the third finding of fact as finds that objects without lights could be seen at a distance of a mile.

3. He excepts to the fifth finding of fact, and to each and every part thereof.

4. He excepts specially to so much of the fifth finding of fact as finds that the regulation lights of the "Bronson" were properly set and burning brightly.

5. He excepts to the sixth finding of fact, and specially excepts to so much of said finding as relates to the alleged showing of a torch light on the "Bronson," and also specially excepts to so much of said finding as finds that the course of the "Bronson" was only changed about a quarter of a point to starboard.

6. He excepts to so much of the seventh finding of fact as finds that no lights or vessel were seen by any of the steamer's watch until 12:45 A. M., when
68 the red light of the schooner "Cassie F. Bronson" was first seen by the officers on the bridge, and then by the lookout, about one and a half points on the steamer's starboard bow, about a quarter of a mile distant.

7. He excepts to the eighth finding of fact, and to each and every part thereof.

8. He excepts to the ninth finding of fact, and to each and every part thereof.

9. He excepts to the first conclusion of law.

10. He excepts to the second conclusion of law, and to each and every part thereof.

11. He excepts to the third conclusion of law, and to each and every part thereof.

12. He excepts to the fourth conclusion of law, and to each and every part thereof.

13. He also excepts to the making and filing by

this Court of any findings of fact or conclusions of law whatever in said causes or either of them as improper and irregular, and as not controlling upon appeal of said causes to the Circuit Court of Appeals for the Fourth Circuit. 69

And without waiving said last exception, but insisting thereon, he further excepts separately to the failure of said judge to make the findings of fact and conclusions of law submitted and proposed to him on his behalf, and which the said judge was requested to make, as supported by competent and relevant testimony, viz. :

14. He excepts to the refusal to find the first finding of fact so proposed.

15. He excepts to the refusal to find the second finding of fact so proposed.

16. He excepts to the refusal to find the third finding of fact so proposed.

17. He excepts to the refusal to find the fourth finding of fact so proposed. 70

18. He excepts to the refusal to find the fifth finding of fact so proposed.

19. He excepts to the refusal to find the sixth finding of fact so proposed.

20. He excepts to the refusal to find the seventh finding of fact so proposed.

21. He excepts to the refusal to find the eighth finding of fact so proposed.

22. He excepts to the refusal to find the ninth finding of fact so proposed.

23. He excepts to the refusal to find the first conclusion of law so proposed.

24. He excepts to the refusal to find the second conclusion of law so proposed.

25. He excepts to the refusal to find the first additional finding of fact as proposed.

71 26. He excepts to the refusal to find the second additional finding of fact as proposed.

27. He excepts to the refusal to find the third additional finding of fact as proposed.

28. He excepts to the refusal to find the fourth additional finding of fact as proposed.

29. He excepts to the refusal to find the fifth additional finding of fact as proposed.

30. He excepts to the refusal to find the sixth additional finding of fact as proposed.

31. He excepts to the refusal to find the seventh additional finding of fact as proposed.

32. He excepts to the refusal to find the eighth additional finding of fact as proposed.

33. He excepts to the refusal to find the ninth additional finding of fact as proposed.

34. He excepts to the refusal to find the tenth additional finding of fact as proposed.

72 35. He excepts to the refusal to find the eleventh additional finding of fact as proposed.

36. He excepts to the refusal to find the twelfth additional finding of fact as proposed.

37. He excepts to the refusal to find the thirteenth additional finding of fact as proposed.

38. He excepts to the refusal to find the fourteenth additional finding of fact as proposed.

39. He excepts to the refusal to find the fifteenth additional finding of fact as proposed.

40. He excepts to the refusal to find the sixteenth additional finding of fact as proposed.

41. He excepts to the refusal to find the seventeenth additional finding of fact as proposed.

42. He excepts to the refusal to find the eighteenth additional finding of fact as proposed.

43. He excepts to the refusal to find the nineteenth additional finding of fact as proposed. 73

44. He excepts to the refusal to find the twentieth additional finding of fact as proposed.

45. He excepts to the refusal to find the twenty-first additional finding of fact as proposed.

46. He excepts to the refusal to find the twenty-second additional finding of fact as proposed.

47. He excepts to the refusal to find the twenty-third additional finding of fact as proposed.

48. He excepts to the refusal to find the twenty-fourth additional finding of fact as proposed.

49. He excepts to the refusal to find the twenty-fifth additional finding of fact as proposed.

50. He excepts to the refusal to find the twenty-sixth additional finding of fact as proposed.

51. He excepts to the refusal to find the twenty-seventh additional finding of fact as proposed. 74

52 He excepts to the refusal to find the twenty-eighth additional finding of fact as proposed.

53. He excepts to the refusal to find the twenty-ninth additional finding of fact as proposed.

54. He excepts to the refusal to find the thirtieth additional finding of fact as proposed.

55. He objects to the refusal to find the thirty-first additional finding of fact as proposed.

56. He excepts to the refusal to find the thirty-second additional finding of fact as proposed.

57. He excepts to the refusal to find the thirty-third additional finding of fact as proposed.

58. He excepts to the refusal to find the first additional conclusion of law as requested.

59. He excepts to the refusal to find the second additional conclusion of law, as requested.

75 60. He excepts to the refusal to find the third additional conclusion of law, as requested.

61. He excepts to the refusal to find the fourth additional conclusion of law, as requested.

62. He excepts to the refusal to find the fifth additional conclusion of law, as requested.

63. He excepts to the refusal to find the sixth additional conclusion of law, as requested.

64. He excepts to the refusal to find the seventh additional conclusion of law, as requested.

65. He excepts to the refusal to find the eighth additional conclusion of law, as requested.

66. He excepts to the refusal to find the ninth additional conclusion of law, as requested.

67. He excepts to the refusal to find the tenth additional conclusion of law, as requested.

68. He excepts to the refusal to find the eleventh additional conclusion of law, as requested.

76 The foregoing exceptions being taken without prejudice and without waiving or limiting, but expressly reserving all rights to a new trial of these causes in the Circuit Court of Appeals for the fourth Circuit.

JOHN H. THOMAS,
FOSTER & THOMSON,
Proctors for "Lepanto," etc.

BILL OF EXCEPTIONS. 77

Filed July 28. 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

In Admiralty.

MYERS BENNETT (Master), and WILLIAM A. ANDERSON, Managing owner of the Schooner "CASSIE F. BRONSON,"
Libellants and Respondents,

vs.

The British Steamship "LEPANTO," etc., HORATIO J. J. WISE (Master), 78
Claimant and Appellant.

HORATIO J. J. WISE (Master),
Libellant and Appellant,

vs.

The Schooner "CASSIE F. BRONSON," WILLIAM A. ANDERSON (Managing Owner),
Claimant and Respondent.

This cause came on for trial at the city of Baltimore, before the Honorable Hugh L. Bond, Circuit Judge, presiding at a term of the Circuit Court of the United States, in and for the District of Mary-

79 land, in the Fourth Circuit, on the twentieth day of June 1891, on the appeal on behalf of the British Steamship Lepanto, her engines etc., from the final decree of the District Court of the United States for the said District of Maryland.

The counsel for the libellants, Myers Bennett (master) and Wiliam A. Anderson, managing owner of the schooner Cassie F. Bronson, read the libel filed by them against the said British steamship Lepanto, her engines, etc., *in rem*, on or about the fifth day of May 1890, in the said District Court as follows:

(See page 3 for libel.)

The counsel for the claimants of the said British steamship Lepanto, read the answer filed on their behalf in said District Court, on or about the thirteenth day of May 1890, as follows:

(See page 6 for answer.)

80 The said counsel also read the cross-libel *in rem*, filed by Horatio J. J. Wise, as master of the said steamship Lepanto, against the schooner Cassie F. Bronson, in said District Court, on or about the thirteenth day of May 1890, as follows:

(See page 10 for cross-libel.)

Counsel for the respective parties then read the depositions read on the trial of the said cross-causes in the said District Court, the party on whose behalf the testimony was taken or read, reading the direct, and counsel for the other party reading the cross.

The rule of the Circuit Court of the United States for the District of Maryland, with reference to the presentation of proposed findings of fact and conclusions of law is as follows:

RULE 76. 82

In Admiralty:

Briefs and Findings of Fact.

"In all cases of appeal from decrees of the Dis-
"trict Court, in Admiralty, before said cases are
"fixed for trial in this Court, the proctors for the
"respective parties shall file a brief with the Clerk.
"And after the hearing or trial in such cases, the
"said proctors shall also file with the Clerk the
"*findings of fact* (as claimed by the respective
"parties), which are required to be found by the
"Court, in pursuance of Sec. 1, Chapter 77, passed
"16 February 1875, Supplement to the Revised
"Statutes, page 135."
Adopted 27th April, 1886.

Thereafter, and on or about the thirtieth day of June 1891, the said judge made and filed the following findings of fact and conclusions of law: 83

(See page 17).

The said judge did not make or file any opinion in writing in said causes or either of them.

Thereafter the counsel for the said claimants of said British steamship "Lepanto," etc., and cross-libellants presented the following findings of fact and conclusions of law, which they requested the court, if it made any findings of fact and conclusions of law, to make and find in addition to and instead of the findings made by said court, and also requested the finding of each proposition thereof separately with the same force and effect as though separately marked and numbered, viz.:

(See page 22).

And thereafter and on the twenty-eighth day of July 1891, by consent of the proctors for the schooner "Cassie F. Bronson," the said claimant and

83 cross-libellant duly filed in the office of the Clerk of the said Circuit Court, and duly served upon Robert H. Smith, Esq., proctor for the said schooner Cassie F. Bronson, the following exceptions separately to the refusal of the said Judge to make the findings of fact and conclusions of law submitted and proposed to him on behalf of the said claimants and cross-libellant, appellants, and which the said judge was requested to make as supported by competent and relevant testimony, and also separately to the findings of fact and conclusions of law made and filed by the said judge as being unsustained by any proper or legal evidence and being in opposition to the facts as proved by the testimony presented, and as contrary to law.

(See page 33).

The following was the only evidence upon the trial of said causes in the said Circuit Court intro-
84 duced on behalf of the said schooner "Cassie F. Bronson."

HENRY BROWNING, a witness produced on behalf of the libellants, being first duly sworn, testifies as follows:

1 Q. State your age, your occupation and where do you reside? A. I am thirty-nine years of age; I am an able seaman; I reside at Boston, Mass.

2 Q. (*By Mr. Smith.*) What vessel are you employed upon, and how long have you been so employed? A. I am employed on the Cassie F. Bronson, and I have been there eight months.

3 Q. In what capacity? A. As first mate.

4 Q. How long have you been going to sea in all? A. About twenty-two years.

5 Q. How long have you been going as mate? A. About twelve years.

6 Q. Were you on the schooner **Bronson** at the time of the collision with the steamship **Lepanto**? A. I was. 85

7 Q. What was your watch that night? A. It was my watch from eight to twelve.

8 Q. Were you in charge of the watch during those hours? A. I was in charge of the watch from eight to twelve.

9 Q. What kind of a night was it? A. A very pleasant, starlight night, and light air.

10 Q. What was the direction of the wind? A. About S. S. W.

11 Q. What was your course during your watch? A. N. E. by E.

12 Q. Was there no change made during your watch? A. None whatever, I had no occasion to make any.

13 Q. How were your sails? A. Way off on the portside.

14 Q. What speed was the vessel making at the end of your watch? A. About two and one half knots at the end of the watch. She made about eleven miles during the whole watch, and we had a little more wind the first part of the watch. 86

15 Q. How do you know her speed? A. By the patent log.

16 Q. Where was your vessel when you left the watch at midnight? A. She was in the vicinity of Shinnecock.

17 Q. Where was your vessel from? A. Norfolk, Va.

18 Q. Bound where? A. Boston.

19 Q. With what cargo? A. Coal.

20 Q. What quantity? A. 1,789 tons.

21 Q. What kind of a vessel is the Bronson? A. Four masted schooner.

22 Q. What is her length? A. 183 feet on the keel.

23 Q. What sails were you carrying that night? A. All sails.

87 24 Q. What time did you call the watch? A. Twelve o'clock.

25 Q. What time did the watch which relieved you take their positions? A. About ten minutes past twelve, I should think. It takes a little while to get ready.

26 Q. Who took charge of the watch which relieved you? A. Captain Meyers Bennett, and the second officer, John Holt.

27 Q. What lights, if any, had been reported on your vessel previous to your going off duty? A. Two lights.

28 Q. What were they? A. Two bright lights.

29 Q. Where were they? A. One was on the starboard bow and the other on the port.

30 Q. Who had reported them? A. The lookout.

31 Q. What time, about, had he reported them? A. The first one he reported about half past eleven and the second about five minutes of twelve.

88 32 Q. Did you see these lights after they were reported? A. Yes, sir.

33 Q. Where did the light which was first reported bear? A. About three points on the starboard bow.

34 Q. How far distant would you say she was when first reported? A. From five to six miles.

35 Q. How long did you continue to watch that light? A. All the time up to being relieved.

36 Q. Where was the light which was first reported when you left the watch? A. Right ahead, about one or two miles off.

37 Q. Where was the light which was reported secondly when first reported? A. About a point and a half on the port bow.

38 Q. How far distant? A. About six miles, I should say—as far as you could well see. On a fine night you can see all of six miles

39 Q. Where was that light when you left the watch? A. About the same direction.

40 Q. What, if anything, passed between you and the officer who relieved you with regard to these lights? A. I reported the lights to him. 89

41 Q. To which one did you report them? A. I first reported to the second mate, who was the first one to come to relieve me.

42 Q. Afterwards did you report them to any one? A. I reported them to the captain when he came on deck.

43 Q. About what time do you think you left the deck? A. About fifteen minutes past twelve.

44 Q. What, if anything, do you know with reference to the lights on your vessel during your watch? A. We had two side lights.

45 Q. State whether or not you saw them during your watch? A. I did.

46 Q. When did you last see them? A. About one minute to twelve.

47 Q. How do you know that was the time? A. Because I looked at the clock to call the watch. I thought it was twelve o'clock, and I therefore looked at the clock. 90

48 Q. You looked at the clock to see whether it was time to call the watch? A. Yes, sir. I had just come then from seeing the lights.

49 Q. Where had you gone to see them? A. On the forecastle deck.

50 Q. How were they? A. Burning brightly.

51 Q. Are you able to say whether or not both of them were burning at that time? A. I am positive.

52 Q. How are the lights on the Bronson as to their quality? A. No better to be found anywhere on this coast.

53 Q. After you left the watch what did you do? A. I went below and took a smoke and a light lunch.

54 Q. What did you next hear from the deck? A. I heard nothing till I laid down to go to sleep.

55 Q. What did you then hear? A. I heard "hard-a-port."

91 56 Q. Who gave that order? A. The captain.

57 Q. What did you then do? A. I jumped up to see what the trouble was.

58 Q. Where did you go? A. Out of the forward companionway on deck.

59 Q. What did you see when you got on deck? A. I saw a red light on her starboard bow and a steamer.

60 Q. How near you? A. About two or three of her own lengths off.

61 Q. What did you then do? A. I stood and watched them.

62 Q. Did they come together? A. Yes, sir; almost immediately.

63 Q. Can you tell us anything about your sails when you came out? A. As soon as I saw this light I looked to see where it came from, and I wanted to see from it how we were heading, and I found the sails in the same position they were in when I left the deck.

92 64 Q. What do you mean by being in the same position? A. Way off on the port side just drawing.

65 Q. What did that show to you as to your vessel's course? A. It showed me that she was about on the same course she was on when I left the deck.

66 Q. After the collision what did you do? A. I went forward, looked over the bow to ascertain the damage, to see whether we were sinking; then I looked at the lights in the rigging, and when I saw we were not sinking I turned around to see both lights to see if they were burning, to see if there was any fault on our side, if anything had happened to the lights, and both lights were burning brightly. Then I went and clewed up the light sails, lowered the boat and went alongside of the steamer, because they hailed us for our assistance. I came alongside of the steamer with four men in the boat. I asked them what they wanted the boat for. Not seeing

any material damage there to hurt them any, to 93
make it dangerous for them, I asked them what they wanted with the boat. They said they hadn't called for the boat and didn't want it. I said that was not true; you did call for the boat and called for it pretty loudly; and then some one finally admitted that they had called for the boat; they thought they were sinking. I then asked for the steamboat's name, but got no answer. I asked again; still got no answer. I says to the men in the boat, Pull her under the stern and see what her name is. I held up a light, or one of the men in the boat held up a light, which we had in the boat, and saw the name Lepanto, Hull. I started and proceeded on board the vessel, and some one hailed from aft, What is your schooner's name? I said the Cassie F. Bronson, of New York. He asked, "What do you say?" I repeated the name three times, then left. Previously, they asked how we
were. I asked them how they were—were they all 94
right? And they said yes; and they asked how we were, and I said I guessed we were all right, we are not sinking. After about an hour and a half I got back and hoisted the boat up; went forward; gave orders to take in the sidelights; the sidelights were taken in and set down on the main deck, burning; then started to clear away the wreck. In about half an hour, I should say—I am not positive about the time—in about half an hour after the steamboat came to us under steam and asked our name. The captain gave him our name, and they went on. Shortly after, another steamer passed by bound to within the neighborhood of Sandy Hook, or thereabouts, and we cleared away the wreck until daylight. At daylight we were sufficiently cleared to get under way with sail. We made all sail again, and got the vessel on her course, which was, of course, her head to wind all this time; she was lying head to wind all this time; and we pro-

95 ceeded on our regular course for Vineyard Sound. The breeze kept freshening up; we had quite a strong breeze that day. We anchored in Vineyard haven about 8 P. M.; the breeze being a southerly breeze. The next morning the captain went ashore, telegraphed his agent to find out what he should do with the vessel; the vessel having no head gear, being cut right down to the water's edge. We didn't know but what we should have to repair before proceeding on the voyage. The captain got word from his agents to stay his mast, if possible, and tow to Boston. I stayed the mast with the help of hawsers and bobstays that was hanging down the water, hauled them up and made hawsers fast to them and took them up to the masthead in order to make stays, to make a kind of a tackle with the bobstays; and we towed to Boston. We didn't tow to Boston until a couple of days afterward, because of the weather; there was too much easterly sea outside, and we didn't risk it to go.

96 67 Q. How was the sea that night when you were in your small boat? A. It was perfectly smooth then

68 Q. How far could you see objects that night without lights when you left the watch? A. All of a mile without lights.

69 Q. Did you, or not, see the hull of the first steamer reported before you left the watch? A. No, sir, I did not, but it was seen afterwards, I believe. I seen nothing but the masthead light and red light.

70 Q. On which steamer? A. On the first mentioned steamer.

71 Q. When her light was first reported, could you or not see her sidelights? A. No, sir.

72 Q. You saw her red light, however, before you left the watch? A. Yes, sir.

73 Q. Did you ever see her green light? A. No, sir.

74 Q. When you left the watch could you see the

sidelights of the second reported steamer? A. No, 97
sir.

75 Q. Please describe the damages to the Bronson? A. Her stem was cut away to the water's edge, cut water, bowsprit, cat-heads, knight-heads and all the dead wood and all pertaining to the bowsprit and the jib-boom, and stays.

76 Q. How about her wood ends? A. That is in dead wood, ain't it?

77 Q. Were they broken off? A. Yes, sir. I should call it that the wood ends are into the dead wood. You can't break away the dead wood without breaking off the wood ends.

78 Q. How about her decks; was her deck affected or not? A. Her deck was started up to the after end of the forward house.

79 Q. How about the hooks and the knees? A. The hooks and knees underneath the forecastle, the hooks and knees underneath the main deck, were started; but the ones on the underneath forecastle were broken; the ones underneath the main deck 98
were started. That all comes in with the dead wood, don't it.

80 Q. How had the two vessel come together? A. They come together nearly square across one another; not square across, but heading a little more with our course; say about two points from square across towards our course.

81 Q. Was the effect of the collision to carry her head away almost as though she had been sawed off? A If she had been sawed off it would have been a little better. She was more as if she had been chopped off.

82 Q. What was done with the Bronson after she towed to Boston? A. She commenced discharging. After she discharged she was hauled out on the railway to ascertain the damage on the bottom, keel, stem and dead wood below water.

83 Q. Was there any work done on her in Boston? A. There was. She was caulked and some graven

99 put in on the stem that had come out forward of the plank, caulked and painted over the same again.

84 Q. What was then done with her? A. Started and towed to Bath.

85 Q. For what purpose? A. For general repairs.

86 Q. Where is she being repaired? A. She is being repaired in Bath, Maine, now.

87 Q. By whom? A. By the New England Company.

88 Q. When will her repairs probably be completed? A. The latter part of this week, I suppose.

Cross-examined by Mr. Thomas :

1 X-Q. When you left the deck of the Cassie F. Bronson, how far from her was the more distant of the two white lights which you had seen? A. The last mentioned steamer was the more distant.

2 X-Q. How far distant about? A. From five to six miles, I should say ; five miles, any how, if
100 not over six. Of course, I wouldn't say to the mile how far she was off. It would be better computed by the time that elapsed from then to the time of the collision, how far she was off.

3 X-Q. Can you give with any precision, the time by your clock at which the collision occurred? A. No, sir ; because I didn't look ; but I judge it was half past twelve. From the relieving of the watch until I lay down to sleep is about half an hour past that hour (12 o'clock), taking a smoke and a lunch at midnight, which I always do—after lunch a smoke—and by that time the half hour is gone, and sometimes a little more.

4 X-Q. Up to the time of your leaving the deck of your schooner did both of the white lights to which you have referred bear towards your schooner about as they had when you first saw them? A. No, sir. The first steamer reported was reported well on the starboard bow. When I left the deck

101 it was right ahead going across our bow, from starboard to port.

5 X-Q. How long did she seem to be ahead in that direction ? A. Well, a very short while, right ahead. Of course, she passed to port very fast. She came on quite an angle with our course.

6 X-Q. Had she passed across your course before you left the deck ? A. No, sir ; she was right ahead. At the time I left the deck she was right ahead.

7 X-Q. What effect upon your schooner does putting her wheel hard-a-port have ? A. Her wheel would go hard-a-starboard by saying "port." Her wheel turns towards starboard, and that would bring the vessel's bow also to the starboard. "Hard-a-port," of course, we don't put the wheel to port by saying, "hard-a-port," but put the wheel hard-a-starboard.

8 X-Q. I ask you what was the effect of putting the wheel hard-a-starboard or hard a-port ; it is to make your head go in the direction in which the wheel goes ; is it not ? A. Exactly. 102

9 X-Q. All you heard was "hard-a-port"? A. Hard-a-port. At least not so : I heard "port, hard-a-port." That is what made me come out so quick, knowing there must be something wrong when the order was given.

10 X-Q. Did you not find that under her hard-a-port wheel she had luffed a point or a point and a half ? A. From the appearance of her sails she hadn't luffed half a point.

11 X-Q. But had luffed nevertheless ? A. I couldn't say whether she had. I didn't look at the compass, but by her appearance she hadn't luffed half a point. She might possibly have luffed a quarter of a point, but I don't know. I know she hadn't luffed any to speak of. If she had only luffed more it would have been all the better. If there had been more wind she would have come up, and it would have been better for the vessel and the steamer, too.

103 12 X-Q. You think it would have been better for her to have luffed? A. Certainly. We would have gone clear under his stern if we could only have luffed. That was the only chance we had to get under his stern.

13 X-Q. The wind was from the westward, was it not? A. The wind was S.S.W., about.

14 X-Q. Would not luffing tend to carry you across her bow rather than under her stern? A. No, sir. It would have carried us under her stern. Our sails were on the port side.

15 X-Q. The wind was on your port side, was it not? A. The wind was on our starboard quarter.

16 X-Q. Blowing from the S.S.W.? A. Yes, sir. We were heading N. E. by E.

17 X-Q. You are not able to say, however, from observation of the compass or otherwise, whether, when you got on deck, her course had actually been changed, or not? A. I am not able to say whether the course had changed to a quarter of a point, or
104 possibly half a point, or not. I wouldn't admit any more than half a point. We might possibly have changed half a point, but not more. I am positive on that.

18 X-Q. When you got on deck, just before the collision, did you see the steamer whose white lights you had first observed? A. No, sir.

19 X-Q. Do you know where she was? A. I do not.

20 X-Q. Which side of your vessel was most injured? A. Both sides alike.

21 X-Q. She struck the steamer nearly bows on then? A. We fouled with the steamer just abaft her bridge.

22 X-Q. What part of your vessel first struck the steamer—the bowsprit? A. I do not know as any part of our vessel struck the steamer whatever. I think the steamer struck us. I do not admit that we struck the steamer. We were not going fast enough to strike anything.

23 X-Q. If you prefer the expression, what part of your vessel did the steamer first strike? A. The jibboom. 105

24 X-Q. About what angle did the bowsprit of your schooner make with the side of the steamer at the moment of collision, as well as you can judge?

A. Nearly straight across the steamboat, as near as I can judge.

25 X-Q. Nearly at right angles, do you mean? A. At right angles.

26 X-Q. (*By Mr. Smith.*) What did the course of this first steamer indicate to you as to her destination? A. Sandy Hook.

Andrew Christiancy, a witness produced on behalf of the libellants, being first duly sworn, testifies as follows:

1 Q. State your age, your occupation, and where do you reside? A. I am twenty-seven years of age. I am steward on the Cassie F. Bronson. I have no particular home. I was born in Mexico. 106

2 Q. (*By Mr. Smith.*) How long have you been on the Bronson? A. Twenty-six months.

3 Q. As steward all the time? A. Yes, sir.

4 Q. How long have you been going to sea as a steward? A. Well, I went as cook and steward for about twelve years. I have been cabin boy for about three years.

5 Q. Were you on board at the time of the collision with the Lepanto? A. I was.

6 Q. What, if anything, did you have to do with her lights the night previous? A. I had to fill them and light them and give them to the watch on deck at sundown.

7 Q. What condition were they in when you gave them to the watch? A. They were all trimmed, filled and cleaned; they were in good condition.

107 8 Q. What kind of lights has she? A. She has got very good lights; as good as any there is around.

9 Q. How do they compare with the lights with other vessels you have been on? A. Well, they are as good and better than some I have been on.

10 Q. Whom did you give them to? A I gave them to a seaman by the name of Albert Nelson.

11 Q. Did you see them after they were put up that night? A. No, sir; I took no notice.

12 Q. When did you next have anything to do with the lights? A. At daylight in the morning Captain Bennett handed them to me.

13 Q. Where were they? A. They were standing on the main deck, just abaft the engine room, near the pumps.

14 Q. What condition were they in when he gave them to you? A. They were lit.

15 Q. Both of them? A. Yes, sir; for I put them both out myself and put them away.

108 16 Q. How did they appear to be, so far as getting light was concerned, in the morning? A. They were just as I turned them up the night before, and the lamps were about two-thirds full of oil.

17. Q. How do you know? A. Well, because I open them every day and refilled them.

18 Q. Did you open them that day? A. Yes, sir; I opened them; had to use them again as soon as we started from the next place.

19 Q. Were you on deck about midnight that night? A. Yes, sir; I had come out to see about my bread. I generally make bread about three times a week, and the nights are too long for the yeast I use; if I make it and let it stand all night without looking at it, it generally gets sour, and I have some one to call me or set an alarm clock.

20 Q. Do you make that a regular custom? A. Yes, on bread nights. That was three times a week.

21 Q. Were you out that night? A. Yes, sir, 109

22 Q. For what purpose? A. To look after the bread.

23 Q. Where was your bread? A. My bread was down in the galley.

24 Q. Where do you sleep? A. I sleep in the cabin.

25 Q. That night were you called out, or did you come out of your own accord? A. The alarm rung up a few minutes before 12.

26 Q. What alarm? A. My alarm clock.

27 Q. Where did you then go? A. I went right straight forward to the galley.

28 Q. What did you do then? A. Opened the door and went down.

29 Q. What did you do down there? A. I found that the sponge had risen, and I made the bread.

30 Q. When you came out what did you see? A. When I came out and turned and shut the door I noticed a steamer on our port side; it seemed as if she was loaded. 110

31 Q. What did you see on her? A. I saw a light; I saw two lights, a red light and a masthead light.

32 Q. On which side was she? A. She was on the port side.

33 Q. Did you see any other light? A. As I raised my head up and looked forward, I saw a bright light.

34 Q. Where? A. On our lee bow.

35 Q. Which bow was that? A. That is the port side.

36 Q. What did you then see, if anything? A. I turned off, and as I went by the forecastle door I saw him (Browning) smoking down there, and I said, Is that Shinnecock light, fellows? and the lookout sung out, No, that is a steamer's light; and I turned in again.

37. Q. Could you see any other than the masthead light on that steamer which was furthest off a little on your port bow? A. No, sir.

111 38. Q. How did you come to ask whether that was Shinnecock? A. I had been told, if we had any kind of a breeze, we would be off that light about midnight; I was told that in the afternoon.

39. Q. The steamer which you first noticed, as you came out of the galley was about how far off, as near as you could tell? A. He might have been over half a mile, or might have been a half mile.

40. Q. Was she passing you? A. Yes, sir; she was going the opposite way.

41. Q. On your port side? A. Yes, sir.

42. Q. Did you or not see her hull? A. I could see a dark object.

43. Q. Could you on the other vessel see any hull when you looked? A. No, sir.

44. Q. Where did you then go? A. I went to bed; I went and turned in.

45. Q. How was the night then? A. It was a pretty fair night, clear, and the stars were out.

112 46. Q. Did you come out before the collision? A. Just before.

47. Q. What brought you out? A. I heard shouting and I broke for the door. When I heard the shouting I came out on deck; and the first thing that braced me up was a steamer about a length and a half, more or less, going acress our bows, with her red light glaring.

48. Q. Did they soon strike? A. Yes, sir; they immediately struck.

49. Q. Did you hear any order on deck at any time just before you came out or after you got out? A. Yes, sir; just as I broke out of the door, I heard, forward of me, "port, hard-a-port," and the word hadn't been spoken but a few seconds when she crashed into us.

Cross-examined by Mr. Thomas:

1. X-Q. Is it customary to trim the lights of the Bronson at night after they are once lighted? A.

113 O, no, sir ; I have never took them down, or been called out to light them, or trim them.

2. X-Q. And no one else trims them after they are once put up? A. No, sir.

3. X-Q. How much oil do the lamps of the Bronson hold? A. Well, sir, very little less than a quart, and never burn but one-third.

4. X-Q. (*By Mr. Smith.*) Each one? A. Each one; yes, sir. They will burn twenty-four hours and leave half of the oil in.

ALBERT NELSON, a witness produced on behalf of the libellants, being first duly sworn, testifies as follows :

1 Q. State your age, your occupation and where do you reside? A. I am twenty-six years of age; I am an able seaman; I do not know where I live now; I was born in Norway. 114

2 Q. (*By Mr. Smith.*) What vessel are you employed on now? A. The Cassie F. Bronson.

3 Q. How long have you been on her? A. I have been on her going on ten months.

4 Q. In what capacity—as able seaman? A. Yes, sir.

5 Q. Where were you on the night of the collision and at the time of the collision with the steamship Lepanto? A. I was at the wheel.

6 Q. What time did you take the wheel? A. I took the wheel somewhere around ten minutes after twelve.

7 Q. Whose watch were you in? A. The captain's.

8 Q. What time were you called? A. I was called at twelve o'clock.

9 Q. After you were called did you go right to the wheel? A. Yes; I was called; I got my clothes on and then I went to the wheel.

115 10 Q. What was the name of the man that you relieved? A. His name was Wilson.

11 Q. What course did he give you? A. N. E. by E.

12 Q. What course did you steer? A. N. E. by E.

13 Q. How was the wind? A. About S. S. W.

14 Q. How did it strike your vessel—on which quarter? A. It was on our starboard quarter.

15 Q. How was the wind—a strong or moderate breeze? A. A small breeze, about two or three miles.

16 Q. How fast was your vessel going? A. Somewhere between two and a half and three miles.

17 Q. How were your sails trimmed? A. Well, hauled out by the tackles on the port side.

18 Q. How did you steer from the time you took the wheel up to the collision? A. N. E. by E.

19 Q. Did your vessel steer well, or not? A. Steered first-rate.

116 20 Q. Did you get any order from any one before the collision? A. No, sir; my orders were N. E. by E. until I got the order to put the wheel hard-a-port.

21 Q. Who gave you that order? A. The captain.

22 Q. Why did he give you that order? A. Because there was a red light on our starboard quarter.

23 Q. Did you see the light? A. Yes, sir; I seen the light. When the captain sung out, "hard-a-port," and the second mate came aft and gave me a hand and we got the wheel hard-a-port, I happened to look and I seen the red light of the steamer; that was the last of it, and then the collision; and then a cracking, and she was going like she was going down.

24 Q. Your vessel? A. Our vessel. I left and went to the boat.

25 Q. Can you tell what change was made in your

vessel's course by putting your helm hard-a-port before the collision ? A. She hadn't no time to come up. She might have changed a quarter of a point. 117

26 Q. Would she change quickly, that night, or not ? A. No, sir ; there was no breeze, and she wasn't going ahead.

27 Q. Before you got the order "hard-a-port," did you know that there was a steamer ahead ? A. No, sir ; I didn't know nothing.

28 Q. Did you see any light before that ? A. No, sir ; I never took no notice of no lights.

29 Q. Your sails were on which side ? A. On our port side.

30 Q. Could you see anything when you were at the wheel that was on your port bow ? A. No, sir ; because the sails were down ; but I could see on our starboard bow.

31 Q. You mean the sails were on the port side and hid everything on your port bow ? A. Yes, sir. 118

32 Q. Did you see a torch on your vessel ? A. Yes, sir.

33 Q. Where did you see the torch ? A. The torch was right ahead, on the forecastle head.

34 Q. Where were you when you saw it ? A. I was to the wheel.

35 Q. What did you do when you saw it ? A. I saw the light and I looked at it ; and I looked then ahead and I saw a bright light.

36 Q. Where did you see this bright light ? A. I seen it ahead, coming from the port towards starboard.

37 Q. Could you see any other light than the bright light ? A. No, sir ; I never paid no more attention to this light.

38 Q. How long did that torch burn ? A. But a few seconds.

39 Q. Then what was done with it ? A. Put away, I suppose ; I don't know ; I wasn't there.

119 40 Q. Did you see it burn any more? A. No, sir.

41 Q. After that did you still steer N. E. by E? A. Yes, sir; I kept my course until the order was given to put the wheel hard-a-port, and the red light was shown then on the starboard bow; and the order was hard-a-port, and then the collision. That is all I know about it.

42 Q. What kind of a night was it? A. It was a fine night, clear, and stars shining.

43 Q. Were you one of the men that got in the boat that went to the steamer? A. Yes, sir.

44 Q. How was the sea? A. Oh, it was smooth water.

45 Q. Did you see another vessel pass on your port side before the collision? A. I never took no notice.

46 Q. Where did the second mate come from when he came to help you? A. I don't know where he came from.

120 47 Q. Was he standing beside you when you got the order to hard-a-port? A. No, sir; he seemed to be about amidships where the captain was.

48 Q. Where was the captain when he gave you that order? A. He was somewhere about amidships.

49 Q. Where had he been before that; had he been on the quarter any? A. Yes, sir; I seen him there, and walking forward.

50 Q. When did he leave the quarter? A. I don't know.

51 Q. You did not notice when he left? A. No, sir.

52 Q. Do you know why he left? A. No, sir.

Cross-examined by Mr. Thomas:

1 X-Q. When you received the order "hard-a-port" which way did you roll your wheel? A. I throwed my wheel this way (showing) with the starboard. I got my order to put it hard-a-port.

2 X-Q. You put it the opposite direction to 121
that indicated by the order? A. Yes, sir; just the opposite way. I put the wheel hard-a-port; say you put the wheel hard-a-starboard.

3 X-Q. You do that in all vessels? A. Yes, sir; all the vessels I have been into.

4 X-Q. What other vessels have you been in than the Cassie F. Bronson? A. O, a lot; I don't know them all. I have been three years in the C. B. Church, a four-master; then in the King Philip, a four-master, and the Augusta Hunt, a four-master, and then lots of three-masted schooners.

5 X-Q. And in all of them you roll the wheel the opposite direction to that indicated by the order? A. Yes, sir. Say "hard-a-port," and you put the wheel a-starboard, in every vessel I have been into.

6 X-Q. Did you ever steer a vessel without a wheel? A. No, sir; I have never been in a vessel without a wheel.

7 X-Q. When you put the wheel of the Bronson
hard-a-port, what way would that throw her head? 122
A. Her head will swing to starboard, this way (showing); swing to our right, to starboard.

8 X-Q. Did you notice by the compass what effect upon the course of the Bronson putting your helm hard-a-port had? A. No, sir; I had no chance to look at the compass, because there was collision, and to the exact minute I never looked; but she wouldn't come to me, I don't think, more than a quarter of a point.

9 X-Q. That is merely your estimate as to what happened, not that you saw she fell one way or the other; is it? A. I only judged it; I am not sure of it.

10 X-Q. How far off was the red light which you say you saw when your torchlight was exhibited? A. I didn't see no red light when the torch was there.

11 X-Q. You saw only the white light when the torchlight was exhibited? A. Yes, sir.

123 12 X-Q. How did that bear from the Cassie F. Bronson? A. It seemed to bear right ahead, to come this way (showing), across our bow to starboard.

13 X-C. Can you tell from one light alone whether she was crossing your bow or not? A. Yes, sir.

14 X-Q. You saw no side lights? A. No, sir.

15 X-Q. How far off was that white light? A. I don't know for sure, but I can guess at it; I judge somewhere about a mile ahead when I saw it.

16 X-Q. Did it, or not, continue ahead? A. No, sir. I seen her coming then and I paid no more attention to it.

17 X Q. Did you see that white light go from one side to the other of your course? A. I seen it coming right ahead. If it come from the starboard bow I could have seen the red light and the masthead light. If the vessel passes me on the weather bow—the sails are on that side, the port side—and I, standing here, can't see underneath the sails to tell what is going on there.

124 18 X-Q. I understood you to say that when the torchlight was exhibited you saw only the white light on the vessel ahead? A. Yes, sir; coming ahead.

19 X-Q. I ask you, could you tell from seeing the white light last, whether she was crossing your bow in the one direction or the other? A. Yes, sir; because, if she had come on the other bow I could have seen her. If she had come and crossed our bow from this side I would see her head light.

20 X-Q. Suppose she is approaching you head on, would you not see her white light as you say you did see it? A. I couldn't see the white light without it crossed our bow. If she showed her bright light, if she was going ahead, as you say, in going ahead all the time, surely, I could not see the white light, because then we would go the same way.

21 X-Q. I ask you if she is approaching you head on, coming from the direction opposite to that

which you are going, would you not see her head light as you did see it? 125

The Witness.—If she is coming right to us?

The Proctor.—Yes.

A. Yes, sir: I seen her bright light as she come the opposite way. We go here (showing) and she comes this way, and I would see the masthead light before I seen anything else.

22 X-Q. So I understand. Therefore, I ask you, seeing only the white light, could you tell in what direction she was going? A. She must come from the port side and cross over to starboard.

23 X-Q. Or directly ahead of you? A. No; she couldn't go the same way as we did.

24 X-Q. Not the same way; but she could be coming the opposite direction and you would just see her white light; would you not? A. Yes; if she would come the opposite way to us then I 126 would see her bright light.

25 X-Q. How long did you watch that white light? A. I didn't watch it at all. I just seen it, and it seemed to go clear; I didn't think of nothing, and I kept on my course and looked after my steering.

26 X-Q. Did it ever get in a position by which it was hidden from you by your sails? A. I never took no more notice of the bright light.

27 X-Q. The only time you saw it was when it was directly ahead of you? A. Yes, sir; when we showed the torchlight.

28 X-Q. Had you seen the red light before you received your order "hard a-port"? A. No, sir; I didn't see the red light before I got the order to put the wheel hard-a-port. That was done as quick as God would let us; and the next thing was the collision, and I thought it was the last of all of us; it was quick done; there wasn't time to do noth-

127 ing; we hadn't gotten it more than down when the collision occurred; and she twisted like she would twist right around.

29 X-Q. You never saw the green light? A. No, sir.

30 X-Q. Had you heard any sidelight reported before the collision?

> *The Witness.*—Do you mean on our vessel?
>
> *The Proctor.*—Yes.

A. No; I heard no report of a light. We don't report our lights.

31 X-Q. I do not mean your lights. Had your lookout reported the colored light of any approaching vessel? A. No, sir; not that I heard.

32 X-Q. Where was the captain standing when he gave you the order "hard-a-port"; standing right by you? A. No, sir; he was amidships.

128 33 X-Q. Where was your wheel? A. The wheel was aft.

34 X-Q. What is the length of your vessel? A. I don't know; I never measured it.

35 X-Q. Have you no idea? A. No, sir; I am no shipbuilder.

JAMES DEE, a witness produced on behalf of the libellants, being first duly sworn, testifies as follows:

1 Q. Please state your age, your occupation, and where do you reside? A. I am 47 years of age; I am an able seaman; I live in Boston, Mass.

2 Q. (*By Mr. Smith.*) What vessel are you on now? A. The Cassie F. Bronson.

3 Q. How long have you been on her? A. I joined her on the 3d of last April.

4 Q. Where? A. Boston.

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5 Q Where were you on the night of the collision with the Lepanto after 12 o'clock? A. I was standing on the forecastle deck.

6 Q. What were you doing? A. Keeping a lookout.

7 Q. Whose watch were you in? A. The captain's watch—the starboard watch.

8 Q. What time were you called? A. Twelve o'clock.

9 Q. Where did you go when you came out? A. I went on the forecastle head.

10 Q. Whom did you relieve? A. A man by the name of Bergin.

11 Q. How was the weather at that time? A. Fine, clear weather.

12 Q. How was the wind? A. The wind was about S. S. W.; somewhere about that.

13 Q. Was it a light or strong breeze? A. A light breeze.

14 Q. What report did you get from the man you relieved on the lookout? A. He said there was a steamer down here, and there is another one crossing our bow. It was just this way, on our bow.

130

15 Q. Did he tell you anything about having reported them? A. He had reported them.

16 Q. Did he say so? A. Yes, sir.

17 Q. What lights did you see on those steamers when you went to the lookout? A. I seen her masthead light and her red light, going in towards Sandy Hook.

18 Q. How did she bear on your steamer, the one that was nearest to you, when you came on the lookout—where was she? A. About ahead.

19 Q. You could see her masthead and red lights, could you? A. Yes, sir.

20 Q. Where did the other light bear at the same time when you came on the lookout? A. Bearing about a point and a half on our port bow.

21 Q. Which was the farthest off? A. One was a point and a half on our port bow.

131 22 Q. How far did you think the nearest one to you was off when you first saw her? A. About three-quarters of a mile, or somewhere in that neighborhood.

23 Q. How far did you think the other one was off? A. She was about five or six miles off.

24. Q. Could you see anything of her but the bright light? A. No, sir.

25 Q. Where did the man then go? A. The man that was relieved went below.

26 Q. What did you do after that? A. I went and looked at our own sidelights; went down and looked at the port bow and come up and looked at the starboard light

27 Q. You do not mean you went off the forecastle head? A. No, sir.

28 Q. You walked over to the port side? A. Yes, sir; first; and seen the red light was burning bright.

29 Q. And then you walked where? A. On the starboard side and seen that the green light was burning. 132

30 Q. Did any one get up on the forecastle head? A. Yes, sir, the second officer.

31 Q. What is his name? A. John Holt, or Colton; I couldn't say which.

32 Q. What did he come up for? A. He says, Jim, how are your lights? I said, burning bright; and he looked himself and he walked away.

33 Q. Do you usually do that when you go on the lookout? A. Always; and the man that relieves me does the same.

34 Q And both your lights were burning brightly when you went on the lookout? A. Yes, sir.

35 Q. Was anything done to your lights from that time up to the collision? A. No, sir, not that I know of.

36 Q. What became of this steamer that was nearest to you? A. She went about her business.

37 Q. How far off did she pass you? A. About three-quarters of a mile.

38 Q. Could you see her hull as she passed? A. 133
Yes, sir.

39 Q. Did you ever see her green light? A. No, sir, I did not.

40 Q. How long did you continue to watch her? A. Oh, I watched her till she got clear of me. She closed her red light and went about her business. I seen her masthead light after I seen her head, and I didn't pay much attention to it, and she was gone about her business.

41 Q. Did you, afterwards, continue to watch the other light? A. Yes, sir.

42 Q. And as that light came nearer to you, how did it seem to draw? A. Well, it seemed to be drawing nearer, and to cross our bow.

43 Q. Was there a torch shown on your vessel? A. Yes, sir.

44 Q. Who showed it? A. The second officer.

45 Q. Was that when he came forward to look at the lights? A. Oh, no, sir,

46 Q. Where did he go then? A. He went aft 134
somewhere; I couldn't say where.

47 Q. When he came with the torch where was this bright light? A. It was about from a quarter of a point to half a point on our port bow.

48 Q. Before he showed the torch, could you see the sidelights? A. No, sir. Just as he showed the torch, this way (showing), I caught his sidelights; and he said, I see it, Jim; and the torch was gone, disappeared, then.

49 Q. How long did it burn? A. It might have been burning, I suppose, two or three seconds—like a flash of lightning.

50 Q. What light was it you saw when he showed that torch? A. I seen the green light; his masthead light and green light.

51 Q. She was then a little bit on your port bow? A. Yes, sir. When I seen it, she was drawing ahead all the time.

52 Q. How far was she off, according to your

135 judgment, when you saw that green light, when the torch was shown? A. About a mile, or a little over.

53 Q. Why did he put it out so quickly? A. Because we seen the green light.

54 Q. You then knew which way she was going? A. Yes, sir. We knew then she was going to our starboard.

55 Q. Did she continue to show her green light? A. Yes, sir.

56 Q. Did she afterwards shut in the green? A. No, sir; she didn't shut in the green until she showed the red.

57 Q. That is what I mean. How far was she off from you when she shut in her green and showed her red light? A. Two or three lengths of herself.

58 Q. Before she changed from the green to the red, how much did she bear on your bow? A. About two points or two and a half points.

136 59 Q. Where? A. With our starboard bow.

60 Q. Did you stand on the forecastle head until they struck? A. Yes, sir. I was in the forecastle a long time after she struck, too.

61 Q. You did not leave the forecastle head until she struck? A. No, sir; I went over the bow, after she got clear, to see how far down we were cut.

62 Q. How far down was she damaged? A. She was damaged right down to the water's edge.

63. Q. Did you get in the small boat to go to the steamer? A. I did, a considerable time afterwards.

64 Q. Did you find out the steamer's name? A. No, sir.

65 Q. Did you not go to the steamer to see what her name was? A. Yes; we went to the steamer afterwards.

66 Q. How was the sea that night, when you were in the small boat? A. Smooth water, light wind.

67 Q. After you came back on board your vessel, did you do anything with the sidelight? A. Yes. The mate sung out to get two bright lights, one aft and one forward, and take the sidelights in. 137

68 Q. Who took in the sidelights? A. I did.

69 Q. How were they when you took them down? A. Burning.

70 Q. How were they burning? A. Burning clear, sir.

71 Q. Why did they take down the sidelights and put up the bright lights? A. Because we were drifting.

72 Q. You had no control over your vessel? A. No control over our ship; all our gearing hanging forward under our bow, smashing her up.

73 Q. Did you see any other lights while you were on the lookout, except these two steamers? A. No, sir.

74 Q. Did the steward come forward and say anything about a light while you were on the lookout? A. He didn't confer with me, but he sung out to me, asked me, if that was Shinnecock; and I said, No, it's a steamship. 138

75 Q. Where was he? A. He was standing at the kitchen door, as he generally does.

76 Q. That light was where then—on which bow? A. It was on the port bow.

77 Q. You could see that from the deck? A. Yes, sir; the booms are high enough.

78 Q. What kind of a vessel is the Cassie F. Bronson? A. She is a good vessel, or she wouldn't be afloat to-day.

79 Q. Could you tell, while you were standing on the forecastle head, and the vessels struck, how the steamer was swinging? A. She had her wheel to port.

80 Q. How was her stern swinging—away from you or towards you? A. Towards our bow. Her stern was swinging towards us, and her bow was going off from us.

139 81 Q. Were there any repairs made on your vessel after you got to Boston? A. Yes, sir, she was on the ways there.

82 Q. You simply repaired her sufficiently to take her to Bath, did you? A. Yes, sir.

Cross-examined by Mr. Thomas:

1 X-Q. What report did you give when you saw the first white light to which you have referred? A. The lights were reported before I came down the forecastle.

2 X-Q. You did not report them? A. No, sir. The lights were reported before I come down the forecastle deck by the other watch. The mate reported to the captain and the second officer.

3 X-Q. How do you know that? A. I supposed he had.

4 X-Q. You do not know anything more upon that subject than what you were told? A. No, sir. The lights were reported before I went on deck, because I asked the man.

140 5 X-Q. Did you report either of those lights? A. I reported the light on the port bow to the second mate.

6 X-Q. What light? A. It was a steamboat light.

7 X-Q. What colored light? A. Bright light.

8 X-Q. Did you report any sidelights upon the steamer? A. No, sir, not until I had reported the sidelights; I said—There is his green light; and he said, I see it too. It all seemed to be the work of one second.

9 X-Q. To whom did you make that report? A. The second officer.

10 X-Q. Whose watch was it? A. The captain's watch.

11 X-Q. You did not report it to the captain? A. He reported it to the captain.

12 X-Q. I ask you what you did? A. I reported —You see that light, Johnnie? and he said, Yes, I see it. That is the bright light. He reported it.

13 X-Q Did you hear him ? A. Yes, sir. 141

14 X-Q. Did you hear him report the other light ? A. Yes, sir. He says, There is the bright light, drawing near us, under our port bow ; and he hallooed loud enough for me to hear him.

15 X-Q. How far off was that bright light then ? A. Five or six miles off then, about.

16 X-Q. That was some time before the torch was exhibited ? A. Oh, yes, sir.

17 X-Q. How far off was it when the torch was exhibited ? A. A little over a mile.

18 X-Q. You then could not see either side light ? A. I could see the hull of the steamer then when we seen the green light.

19 X-Q. Could you see the hull of the steamer and the green light when you exhibited your torch ? A. Yes, sir ; as it was out, we seen the hull then and the green light ; we saw the green light before we could make out the hull.

20 X-Q. And you did not report that green light ? A. Yes, sir, I reported the green light. 142

21 X-Q. To whom ? A. I hallooed, Green light about half a point on our port bow. Says I, That's a steamer's green light.

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John Holt, a witness produced on behalf of the schooner Cassie F. Bronson, being first duly sworn, testified as follows :

1 Q. State your age, your occupation, and where do you reside ? A. I am 26 years of age ; I am a seaman ; I reside in Baltimore.

By Mr. Smith :

2 Q. What vessel are you on now ? A. The Cassie F. Bronson.

3 Q. In what capacity ? A. Second mate.

4 Q. How long have you been on her ? A. I have been on her since the 3d of September last.

143 5 Q. Were you on board at the time of the collision with the steamship Lepanto on the 23d of April? A. Yes, sir.

6 Q. Whose watch were you in? A. The starboard watch and the captain's watch.

7 Q. What time did you go on duty that night? A. A few minutes after 12 o'clock.

8 Q. When you came on duty whom did you relieve? A. The mate, Mr. Browning.

9 Q. Where was he when you came on deck? A. He was aft, on the quarter deck.

10 Q. What, if anything, was said between you at that time? A. The report that the steamer was right ahead of us, showing a red light and masthead light, and also the report of a white light a point and a half on our port bow.

11 Q. Did you look at these lights? A. Yes, sir.

12 Q. Could you or not see them? A. I could see them.

144 13 Q. How did they bear when you first saw them? A. The first named steamer, showing a red light and masthead light, was right ahead of us.

14 Q. About how far off? A. A mile off, I suppose; I couldn't tell exactly the distance off; thereabouts, I judge.

15 Q. The other bore how? A, One and a half points on our bow.

16 Q. About how far off? A. I don't know the distance; maybe five or six miles.

17 Q. Could you, or not, see anything but her masthead light? A. That is all I could see, the masthead light.

18 Q. When did the captain come out? A. He came up a few minutes after I came aft.

19 Q. Where were you and the first officer when he came aft? A. Standing aft, alongside of the binnacle.

20 Q. Where did Browning go then? A. After

the captain came up he went forward; I suppose he went below. 145

21 Q. What did you do after the captain came on deck? A. He asked how our side lights were; I went forward and looked at the side lights, and came back aft and told him our side lights were burning bright.

22 Q. How did you find them when you went forward? A. Burning bright.

23 Q. Where did you go to see them? A. I went forward on the forecastle.

24 Q. What lights were burning? A. Both of our side lights, red and green.

25 Q. When you went forward to look at your lights, did you or not notice the steamer's lights which had been spoken? A. Then I seen a bright light that was on our port bow.

26 Q. Which one? A. The one furthest off.

27 Q. Where was the other one? A. The other one had crossed us and was on our port beam.

28 Q. What lights was she showing then? A. 146 Didn't show any lights then, her lights were hid.

29 Q. Which? A. The first steamer's lights were ahead.

30 Q. She had gone clear of you? A. Yes, sir, her lights were out of sight.

31 Q. Which way was she bound? A. As near as I could tell she was going about west.

32 Q. Where did you suppose, from her course, she was bound? A. Sandy Hook, I should judge.

33 Q. After examining your lights, and going aft and reporting them, what did you then do? A. I went aft and stayed aft, walking up and down the quarter deck.

34 Q. Where was the captain at this time? A. The captain was forward on the poop, the forward part of the poop.

35 Q. While you were on the quarter, aft, looking at your lights, did you or not notice the steamer which was ahead? A. Yes, sir.

147 36 Q. How did she continue to bear? A. She seemed to be gradually drawing more ahead, coming nearer to us.

37 Q. What lights did she continue to show? A. Her masthead light: that is all I seen.

38 Q. What next took place on your vessel? A. The captain called me and he told me to show the torchlight.

39 Q. Where was he? A. He was on the poop.

40 Q. What did you do? A. I went forward and lit the lights.

41 Q. Where was the torch? A. In the forward house on the starboard side.

42 Q. What did you first do when you went there? A. I took the torch out and lit a match and lit the torch with it. Just as I held the torch up, the man reported the green light and I put the torch out.

43 Q. Which man? A. The man on the lookout.

44 Q. Did you or not see the red light? A. Yes, sir, I seen it; I told the man, yes, I saw the light. 148

45 Q. A green light on what? A. A green light on the steamer.

46 Q. How long did the torch burn? A. Maybe two seconds, just chanced to hold it up, and then reported the light, and then immediately put it out.

47 Q. Why did you then put it out? A. Because she was showing the green light. I thought his intention was to cross to starboard all clear of us, the way he was going.

48 Q. Where were you standing when you showed the torch? A. On the starboard side, on the forecastle deck.

49 Q. Where did you then go? A. I went aft again.

50 Q. Did you walk or run? A. I walked aft.

51 Q. When you came to show the torch, did you walk or did you run? A. I walked.

52 Q. How far, as nearly as you could judge,

was the steamer from you when you first saw her green light? A. I don't know the distance; from one and a half miles to two miles. 149

53 Q. And her green light was not seen until just the time you showed the torch? A. Just at the time I showed the torch the green light was reported.

54 Q. Were you not looking, at the same time, and saw the green light? A. I saw the green light, yes, sir.

55 Q. When you went aft, what did you do? A. I didn't do anything. I walked aft and staid there; walked up and down the quarter deck.

56 Q. Did you, or not, watch the steamer? A. Yes, sir; I watched the steamer.

57 Q. What did you see on the steamer? A. I seen this green light and masthead light.

58 Q. About how did the steamer bear when you first saw her green light? A. About half a point on the port bow.

59 Q. What change, if any, did you notice in the steamer after you went aft? A. I noticed that he drawed more over on our starboard. 150

60 Q. Did you, or not, notice any change in her course? A. No, sir; not then.

61 Q. What did you do then? A. Shortly after, I seen her show her head light and green light, both.

62 Q. How did she then bear? A. About two points on our starboard bow.

63 Q. How long did you see both her lights? A. Not long.

64 Q. What did you then see? A. Seen the red light only.

65 Q. And her masthead light? A. Yes, sir; and her masthead light.

66 Q. Could you see the hull, then, of the steamer? A. Yes, sir.

67 Q. How far was she off then? A. Maybe three-quarters of a mile.

151 68 Q. What order was given after that on your vessel ? A. Hard-a-port.

69 Q. Who gave the order ? A. Captain Bennett did.

70 Q. Where was he ? A. He was on the poop.

71 Q. What did you do then ? A. I repeated the order hard-a-port, and gave the man a hand to hard-a-port the wheel.

72 Q. How did the steamer bear from you when that order was given ; how was she heading ? A. The steamer was heading not quite across our track, but nearly across our track.

73 Q. What effect did your putting the helm hard-a-port have on your vessel ? A. Didn't have any effect hardly.

74 Q. Did you, or not, notice the compass ? A. Yes, sir.

75 Q. What did it show ? A. It showed that she luffed a quarter of a point.

76 Q. In which direction did her head go ? A.
152 To starboard.

77 Q. How had you been steering before that ? A. N. E. by E.

78 Q. How long ? A. All night.

79 Q. Was that the course when you left the watch at 8 o'clock ? A. Yes, sir.

80 Q. Was that the course when you came on deck at 12 ? A. Yes, sir.

81 Q. How was the weather at that time ? A. The weather was fine, clear.

82 Q. How was the wind ? A. About S. S. W.

83 Q. What kind of a breeze was it ? A. Light, very light.

84 Q. How fast were you going ? A. Two and a half miles to three miles ; somewhere about that.

85 Q. What difficulty, if any, was there in seeing lights that night ? A. None whatever that I could see.

86 Q. Where was this steamer that was nearest you when you showed the torch ? A. She had passed by us out of sight. I didn't see her then.

87 Q. You didn't see her from the forecastle ? 153
A. No, sir ; I didn't see her from nowhere.

88 Q. When you left the forecastle, after seeing the steamer's green light, did you or not, suppose there was any danger ? A. No, sir.

89 Q. Where were you standing when they struck ? A. I was to the wheel. I had my hand on the wheel.

90 Q. What was the effect of the two vessels coming together ? How did your vessel go ; how did she turn ? A. When the steamer struck our vessel, it turned right around in the same direction in which the steamer was going.

91 Q. About what angle did they strike ? A. About seventy degrees, I should call it from the head.

92 Q. Where is the angle of seventy degrees ? A. From right ahead and round to where the steamer came.

93 Q. What was the angle between your port
bow and the steamer's port side ; what was the 154
angle between your port side and the steamer's
port side ?

> *The Witness.*—When the collision happened ?
>
> *The Proctor.*—When the collision happened. Was that angle larger or smaller than the angle formed by your starboard side and the steamer's port ?

A. It was larger. I thought you meant down from the way our vessel was heading and the direction the steamer came on us.

94 Q. The angle on your starboard bow was a little less than the other ? A. Yes, sir.

95 Q. A little less than a right angle ? A. Yes, sir.

96 Q. What did you do after the collision with your vessel ? A. After the collision we got our sails trimmed and got the boat ready to lower.

155 97 Q. What did you then do after the collision? A. Helped to get the boat clear.

98 Q. Did you go off in the boat? A. No, sir.

99 Q. Where was your vessel the rest of the night? A. She was lying hove to, not under command.

100 Q. What was done with the side lights? A. They were taken down.

101 Q. What did you put up? A. White lights.

102 Q. What did you do the next morning on your vessel? A. The next morning, after we had the wreck cleared away, we drawed our aft sails down and kept on our course.

103 Q. Where did you go? A. To Vineyard Haven.

104 Q. When did you get there? A. Got there that night at eight o'clock.

105 Q. Wednesday night at eight o'clock? A. Yes, sir.

156 106 Q. When did you leave there? A. Saturday.

107 Q. Where did you go? A. To Boston.

108 Q. How? A. Towed.

109 Q. Why did you not go sooner? A. The tugboat didn't come.

110 Q. Could you get no boat there? A. No, sir.

111 Q. Could you not sail to Boston? A. No, sir.

112 Q. Why not? A. Had nothing to stay our masts to.

113 Q. When did you get to Boston? A. We got to Boston Sunday morning.

114 Q. When did you commence discharging? A. Monday.

115 Q. When did you finish? A. Friday.

116 Q. What did you do then? A. Went over to East Boston and waited our turn to get on the railway.

117 Q. How long did you have to wait? A. Had to wait from Saturday until Tuesday. 157

118 Q. What did you do when you got on the railway? A. She was caulked around forward and several pieces put in.

119 Q. How long were you there repairing? A. Twenty-four hours.

120 Q. What did you then do? A. Towed to Bath.

121 Q. When did you arrive in Bath? A. Arrived in Bath Thursday.

122 Q. When did you get to work? A. The same day.

123 Q. When did you finish repairing? A. The 5th of June.

124 Q. From the time you arrived there until the 5th of June, were they or not at work on her all the time? A. Yes, sir.

125 Q. Every day? A. Yes, sir, except Sunday.

126 Q. How many men, on an average, worked on her? A. Twenty-five or thirty men. 158

127 Q. Did you or not keep the time? A. Yes, sir.

128 Q. What did you do as soon as the repairs were finished? A. Left there.

129 Q. For where? A. Sailed for Norfolk.

130 Q. How were your sails when you came on deck that night? A. Our sails were on the port side.

131 Q. Were they full? A. Full, yes, sir; just drawing; light breeze, nearly aft; hardly enough to keep the booms off. We had tackle hooked on to keep the booms off.

132 Q. How were the booms—inboard or out? A. All outboards.

133 Q. Are you, or not, familiar with the coast along there? A. I know a little about it.

134 Q. Did you know where your vessel was? A. Yes, sir; nearly, not exactly.

159 135 Q. Where was she? A. About twenty miles S. S. E. of Shinnecock light.

136 Q. Did you, or not, notice any other vessels in your neighborhood, just before the collision? A. No, sir; none.

Cross-examined by Mr. Thomas:

1 X-Q. What kind of a vessel was it that first passed across your course. A. A barkentine rigged steamer.

2 X-Q. Did you see none but her masthead and red lights when you first saw her? A. That is all I seen.

3 X-Q. And she was distant how far from you? A. May be a mile off, when she was right ahead.

4 X-Q. Did you never see her green light? A. No, sir.

5 X-Q. How long was she directly ahead of you? Not long; passed ahead of us, going past pretty quick; didn't stay still; went right by us; only a few minutes, I supposed, she could have been ahead of us. 160

6 X-Q. How far from you did she pass? A. About a mile, I should call it. I don't know the distance; it is hard to tell; may be she was a mile when she was right ahead of us; as she came on the port side of us, she was nearer to us.

7 X-Q. Did you see her, or any light of hers, before she was directly ahead of you? A. I did not; because I was not on deck before that.

8 X-Q. Could you see her hull? A. Yes, sir; after she got on our beam I could see her hull.

9 X-Q. Could you not see it when she was directly ahead of you? A. No, sir.

10 X-Q. You exhibited no torch light until after she had crossed your course? A. No, sir.

11 X-Q. Did you do so immediately afterwards? A. No, sir.

12 X-Q. How long afterwards? A. Well, I don't know; I didn't carry no watch; in a little while

after, the steamer was past us; I didn't see her lights no more; I don't know how long it was after. 161

13 X-Q. Before exhibiting the torchlight, did you see no light of the other steamer except her masthead light? A. No, sir; nothing but her masthead light.

14 X-Q. How far off was she? A. I don't know; she might have been five or six miles off.

15 X-Q. Do you mean she was that far off after the steamer, which was nearest to you, had crossed your course—when the steamer which was nearest to you had crossed your course? A. She was nearest to us then.

16 X-Q. How near to you was she when the steamer nearest to you crossed your course? A. I think she was five miles off.

17 X-Q. How far was she when you showed your torchlight? A. About two miles or a mile and a half.

18 X-Q. Was she still bearing over your port bow? A. A little on the port bow then. 162

19 X-Q. As much as when you first saw her? A. No, sir.

20 X-Q. She had drawn more ahead? A. Yes, sir.

21 X-Q. Didn't that indicate to you that she was crossing you from your port to your starboard as well as her green light? A. Yes, sir. But it looked as if she was coming rather close to us, keeping almost ahead of us all along.

22 X-Q. For what distance did she seem to be keeping almost ahead of you? A. I don't know how much.

23 X-Q. Give an idea. How far off was she when she first seemed to be directly ahead of you, and how far off was she when she seemed to cross your course? A. When she crossed our course she was about a mile and a half off, or a mile.

24 X-Q. While she was almost directly ahead of you, did you not see both her side lights? A. No,

163 sir ; seen the green light only and the masthead light.

25 X-Q. How far over your starboard bow did she at any time bear ? A. She bore as much as two points on our starboard bow ; she was more than that on our starboard bow.

26 X-Q. How much ? A. Just before the collision, just before she struck us, I suppose she bore about three points, or more, on our starboard bow ; she was coming almost across us.

27 X-Q. Which of her side lights did you see when she bore as much as three points on your starboard bow ? A. I seen her red side light and masthead light.

28 X-Q. Immediately before seeing her red light, how much did she bear on your starboard bow ? A. About two points or two and one half points before showing her red light.

29 X-Q. How far off do you think she was when she showed her red light, for the first time ? A. 164 About half a mile, or three-quarters of a mile ; I could see the whole of her.

30 X-Q. Did you then exhibit a torch light ? A. No, sir.

31 X-Q. Did you immediately change your course, upon seeing the red light ? A. When her green light was hid, and showing nothing but her red light and masthead light, the order was given to hard-a-port.

32 X-Q. That is when she was half a mile off ? A. Yes, sir.

33 X-Q. Hard-a-port or port ? A. Hard-a-port.

34 Q. Were you standing near the wheelsman ? A. Yes, sir.

35 X-Q. Did you see how he rolled his wheel ? A. I helped him to roll it.

36 X-Q. Which way ? A. Rolled the wheel towards the starboard.

37 X-Q. Which way did that move the helm ? A. Moved the helm to port.

38 X-Q. Did you keep your wheel hard-a-port from that time until the collision? A. We just had time to put it hard-a-port until the collision happened; just got the wheel put hard-a-port when the steamer struck us. 165

39 X-Q. The two vessels, in the mean time, had made a combined distance of half a mile? A. Yes, sir; must have made that; because, when the order was given to hard-a-port, immediately hove the wheel hard-a-port, and as we got it hard-a-port the collision happened.

40 X-Q. You think the two vessels made a combined distance of half a mile while your wheel was hard a-port? A. I don't know if the distance was half a mile; I couldn't tell no distance exactly, seeing a light on a dark night; even if it is clear, I couldn't tell how far off it is.

41 X-Q. You think, however, that the approaching steamer was half a mile off when you put your wheel hard-a-port, and you kept it hard-a-port until the collision; is that so? A. Just got it 166
hard-a-port when the steamer struck us.

42 X-Q. Did you not say that the steamer was half a mile off, you thought, when you put it hard-a-port? A. When we seen the steamer's red light, I said she was half a mile off, or thought she was.

43 X-Q. And you immediately put your wheel hard-a-port? A. The order was given hard-a-port, and we put the wheel hard-a-port.

44 X-Q. Immediately? A. Yes, sir.

45 X-Q. How long an interval do you think elapsed between the giving and the execution of the order to hard-a-port? A. I don't know.

46 X-Q. Scarcely any? A. Might have been a minute, or two; it is hard to tell the time.

47 X-Q. Hardly a minute or two to execute that order, did it? Does it take you a minute or two to change your wheel? A. Well, I guess it does; I think it does.

167 48 X-Q. You think it takes a minute or two to put your wheel hard-a-port after you begin to do it? A. I think it takes a minute; I don't know; I never timed it.

49 X-Q. Is your wheel very hard to move? A. No, sir; not very.

50 X-Q. When you saw the red light of the steamer, was her green light shut out? A. Yes, sir.

51 X-Q. Was there any torch, then, or afterwards exhibited on your vessel? A. No, sir.

52 X-Q. What did the appearance of the red light and shutting out of the green light indicate to you as to the course of the steamer? A. Indicated that the steamer's intention was to recross our track again to port.

53 X-Q. How far off from you do you think she was when that became apparent to you; when it became apparent to you that she meant to cross your course from your starboard to your port? A.
168 I don't know; it might have been half a mile off when she showed her red light.

54 X-Q. And shut out her green? A. Yes, sir.

55 X-Q. Is it customary when the order hard-a-port is given to put your wheel hard-a-starboard? A. Well, the wheel worked that way; you have to heave the wheel towards starboard to make the helm come to port.

56 X-Q. Is that so on all vessels? A. Yes, sir; all that I know of. I never seen them no other way.

57 X-Q. The wheelsman does always exactly the opposite of what he is directed to do? A. Yes, sir.

Re-examined by Mr. Smith:

1 R-D-Q. What was the color of your torch-light? A. White light.

2 R-D-Q. What do you burn? A. Turpentine.

3 R-D-Q. Is it as white as the masthead light of a steamer? A. Yes, sir.

4 R-D-Q. What is the torch, itself, made of? A. It is made of lamp wick, rolled up in a ball. 169

5 R-D-Q. What is it kept in? A. Kept in a can.

6 R-D-Q. What is in the can? A. Turpentine.

7 R-D-Q. Would it be anything like the port light of a vessel? A. No, sir.

MYERS BENNETT, master of the schooner Cassie F. Bronson, produced on behalf of libellants, being first duly sworn, testifies as follows:

1 Q. Please state your age, your residence and your occupation? A. I am thirty-six years of age; I reside at Avondale, Penn.; I am a master mariner.

2 Q. (*By Mr. Smith.*) How long have you been a master mariner? A. Nine years.

3 Q. Of what class of vessels? A. Schooners, altogether. 170

4 Q. What vessel are you now in command of? A. The schooner Cassie F. Bronson.

5 Q. How long have you been her master? A. Three years.

6 Q. Where were you on the night of the collision with the steamship Lepanto? A. Off of the south coast of New England, about twenty-five miles southeast of Shinnecock light.

7 Q. On what voyage were you? A. From Norfolk to Boston, loaded with coal.

8 Q. When did you leave Norfolk? A. I finished loading on the night of the 15th of April, and towed down to Hampton Roads on the morning of the 16th.

9 Q. What is the carrying capacity of the schooner Cassie F. Bronson? A. Her carrying capacity is 1,800 tons.

10 Q. What is her length? A. 185 feet keel, I think.

171 11 Q. And her beam? A. Forty feet.

12 Q. How many masts? A. Four masts.

13 Q. What time did you come on duty on the night of the 22d or morning of the 23d of April? A. At 12 o'clock or a few minutes after. I suppose it was fifteen minutes after, probably, when I came on deck.

14 Q. How many men were in your watch? A. The second mate and two men.

15 Q. When you came on deck, where did you first go? A. Came out on the quarter aft of the companionway.

16 Q. Who was there? A. The first and second officers and the man at the wheel.

17 Q. Did you, or not, have any conversation with the first officer? A. Yes, he pointed out two lights to me, said steamer just passing from starboard to port and from east to west, and the other he supposed was a steamer about a point and a half on our port bow.

172 18 Q. Did you, or not, see these lights, when he spoke them? A. Oh, yes. I looked to leeward, and saw both lights.

19 Q. What did you see on the first steamer nearest to you? A. I saw a masthead light and red light.

20 Q. Where was she? A. A little on our port bow, just passing our port.

21 Q. How far did she seem to you to be off? A. About half a mile, I judge—from a half to three-quarters.

22 Q. Could you or not, see her hull? A. Yes, sir; I could see her rig; could see how she was rigged.

23 Q. How was she rigged? A. Barkentine. I forget whether she was square rigged on hermain, or only on her fore.

24 Q. How near did she pass you on your port side? A. I judge about half a mile.

25 Q. Did she, or not, require any attention from

you, in her position, after you noticed her? A. No, sir; passed on; soon shut in her red light and masthead light. 173

26 Q. Where did you suppose she was bound? A. I supposed she was bound to New York. That seemed to be the course she was steering, to Sandy Hook.

27 Q. What distance did you suppose the other steamer was, when you first noticed her light? A. Three or four miles, I should judge.

28 Q. What did you do, after you came on deck, and the first officer reported these lights to you? A. I told the second officer to see that the side-lights were burning all right, and walked along. I paid no more attention, for a little while particularly; saw one steamer had gone and the other was not near; still watched her approaching, drawing a little ahead all the time.

29 Q. What, if anything, did the second officer report to you about the lights? A. He said they were all right, burning all right. 174

30 Q. Where had he been? A. He went forward and looked, and came back and reported.

31 Q. Did you go forward yourself? A. No, sir; I walked along amidships.

32 Q. How did the light on the steamer ahead continue to approach you? A. Drawing a little ahead, across our bows a little; drawing ahead all the time a little, but very slowly.

33 Q. What, if any order did you give, as she came nearer, about showing a light? A. I told the second mate I thought she was coming pretty close, and he had better show the torchlight.

34 Q. What did he do? A. He got his torch out and was about to show it, about to flash it, and I said, never mind, I see his green light.

35 Q. What had he done? A. He had just lighted the torch and threw it up and put it out again.

36 Q. Why did you give the order to put it out?

175 A. I saw he was going all clear, and I supposed that he had seen us; he was close enough for me to see his light, and I thought he would see my lights.

37 Q. Previous to your giving this order to the second officer, what light had you seen on the steamer? A. The masthead light only.

38 Q. After you saw her green light what did you do? A. I continued on my course. By this time, by the time he had put the light out and walked along aft, the steamer had drawn out on my starboard bow. I could see him plainly out on the starboard bow.

39 Q. What kind of a light? A. Green light and masthead light.

40 Q. Where did you continue to stand? A. Along amidships.

41 Q. Did you watch this steamer then? A. Yes, sir; I naturally watched him. I didn't feel anyways uneasy though, because he was out on my starboard bow, showing his green light, and I
176 couldn't see his red light.

42 Q. Did you afterwards notice any change? A. Yes, sir. A few seconds, or probably a minute or so, he came out probably two points on our starboard bow, when he showed a red light also, and then, almost immediately, shut in his green light. With that I hallooed to our helmsman, hard-a-port. I thought probably, our vessel would luff out to clear him. I saw his intention was to cross our bow again. That was the only thing I could do under the circumstances. He was very close to me.

43 Q. At the time he ported and showed his two side lights, and then his red light only, could you or not see the hull of the vessel? A. Yes, sir; I could see his hull; could see him swinging.

44 Q. At the time the steamship made this change, she was bearing about how? A. I think she must have been about two points on our starboard bow when I saw her red light for the first time.

45 Q. How near was she to you then? A. I
don't think she was more than a quarter of a mile 177
away; about a quarter of a mile.

46 Q. Did she or not seem to be coming fast or to be going fast? A. Oh, yes; she seemed to be going pretty fast.

47 Q. How fast were you going? A. About two knots or two and a half—just half steerage way.

48 Q. The breeze was light, was it? A. Very light.

49 Q. How was the night? A. Clear, starlight.

50 Q. How were your sails? A. Our sails were all hauled off. The wind was about S. S. W., I should judge; we were heading N. E. by E.; had them all hauled off to get the benefit of what wind there was; had the tackles hooked on.

51 Q. What course had you given to steer? A. N. E. by E.

52 Q. When? A. At eight o'clock at night, the night before, or that same night.

53 Q. And no change had been given the whole
night by you? A. No, sir. 178

54 Q. Could you or not tell how your vessel was steering, whether she was steering all right or not? A. Oh, yes; I could tell that while I was on deck.

55 Q. I mean after you came on deck? A. Yes, sir.

56 Q. How did the vessels come together, at about what angle? A. The steamer came into us nearly straight across our bow.

57 Q. What damage was done to your vessel? A. All our head rigging, head sails, jibboom, bowsprit were carried away, and our bow was all stove up; the planking and forecastle deck were moved; the stem partly broken off; the nightheads broken and twisted all the way down.

58 Q. Why was there so much damage done when you were going so slowly? A. The steamer was going pretty fast, and she was swinging past under a port helm, and would naturally come down on us, swinging under a port helm.

179 59 Q. How was her head turned by the collision? A. At the time of the collision about N. N. W., I should judge, or N. W. by N. That would be directly across the bow, the course we were steering.

60 Q. What difficulty, if any, would there have been for a steamer coming up astern of the steamship which first passed you, in seeing her masthead light? A. I couldn't see his masthead light, coming directly astern. The masthead light would not show directly astern.

61 Q. How much would a vessel astern have to be on her quarter before she could see her masthead light? A. I don't know; I never particularly watched them after they got past me. It is only a little ways abaft of the beam, I think, that the steamer's masthead light showed.

62 Q. After the collision what point did you make first with your vessel? A. Vineyard Haven, after I got straightened up.

63 Q. When did you get there? A. The following night.

180 64 Q. How did you get to Boston? A. Towed from Vineyard Haven to Boston.

65 Q. What vessel towed you? The steamtug Harold.

66 Q. What did you pay her? A. $200.

67 Q. Why did you not sail? A. Because it was not safe to sail. All our head rigging was gone, the masts were stayed with lines, and our bow was all stove up. If I had had any head sail I couldn't have done anything. I couldn't have worked with a head wind anyhow.

68 Q. How long did you have to wait for a tug? A. Waited for a tug three days. When that tug was there the weather was so that the tug didn't dare to go out with us.

69 Q. After you got to Boston, how soon did you commence to discharge? A. Commenced discharging the next day; got there on Sunday and commenced on Monday to discharge.

70 Q. After you finished discharging, what did you do? A. Took the vessel to East Boston Railway, hauled her out and examined her, caulked around her stem, put in some graven pieces, and then towed to Bath and repaired. 181

71 Q. What did you have to pay to be towed to Bath? A. $150.

72 Q. Why did you go to Bath to repair? A. We couldn't get any estimate on the bills there, and we supposed we could do it cheaper and sooner than we could in Boston. They only worked eight hours a day in Boston, and worked ten in Bath, and wages were $3 in Bath and $3.50 in Boston.

73 Q. How soon after you got to Bath did they commence work? A. Immediately, as soon as we got there. They were all ready for us; they had been notified that we were coming and were prepared for us.

74 Q. Do you remember what day you left Boston? A. I remember it was on Wednesday; I forget the day of the month. 182

75 Q. Was it one week or two weeks after the collision? A. Two weeks after the collision; just two weeks after the collision; the collision happened on Wednesday.

76 Q. When did you finish repairing? A. Finished repairing about a week ago last Thursday, at 7 o'clock in the evening.

77 Q. What did you then do? A. Towed to sea and went to Norfolk for another load of coal.

78 Q. Where is your vessel now? A. In Norfolk, loading. She is loaded, I suppose, now. They told me they could load her Saturday; but I told them I wasn't particular, because I had to come up here to-day; that if they got her loaded to-day it would be all right.

79 Q. What work, if any, was done on your vessel at Bath, except to repair the damage caused by the collision? A. There wasn't anything done at all.

183 80 Q. How many men, on an average, were put to work on her each day? A. I really do not know. I couldn't keep the time at all. The second mate tried to keep the time; I judge about twenty-five or thirty men a day; they were working all around the yard, getting stuff out—some working there, and some working on the vessel.

81 Q. Were you, or not, anxious to get her repaired? A. Very anxious.

82 Q. Why? A. Wanted to get to work again; was at a big expense; that vessel wasn't making anything lying there.

83 Q. What business had she made engagements for? A. She was chartered to carry coal from Norfolk to Boston until the first of December for Curren & Burton, Boston.

84 Q. At what rate of freight? A. $1.10 a ton.

85 Q. How many trips could you have made between the time your vessel was discharged in Boston and the time she sailed from Bath for Norfolk?
184 A. She might have made at least two trips.

86 Q. What is the average length of time for a trip? A. About eighteen days, to load and discharge.

87 Q. Is there any other vessel running under a similar charter? A. Yes, sir; the Blanche H. King.

88 Q. Owned by the same parties? A. Yes, sir; and carrying the same amount of coal that the Bronson does; she has made two trips, and I was ahead of her at the time of the collision.

89 Q. She has made two trips since? A. Yes, sir; she has made two trips, and is now ready to leave Boston on her third trip.

90 Q. Did you, or not, have the crew on your vessel while she was being repaired? A. Yes, sir.

91 Q. For what purpose? A. I didn't dare to go down to Bath without some men with me, and I wanted them to assist and do all they could, work on the vessel down there.

92 Q. Were they, or not, on the vessel? A. Yes, 185
sir; they were at work on the vessel, helping the carpenters, building stages and helping them around.

93. What is the Bronson's age? A. She will be four years old this coming August.

94 Q. What condition was she in before the collision? A. Fine condition. There wasn't a vessel in better condition on the coast; she never leaked any. I was out in a hurricane a year ago last April, when so many vessels were lost, and she didn't make a bit of water. She was hove to eighty-five hours. She always continued tight and in good condition.

95 Q. When you came on deck, a little after twelve, and the mate spoke to you of these steamers, how was the nearest steamer with reference to the other steamer; how did she bear with reference to the other steamer? A. She bore a little off, a little further a-port than the other steamer did.
She was passing to the westward, and I could see 186
the other one.

96 Q. In her position, as you first saw her, would she or not have intercepted the lights of your vessel from the other steamer? A. No, sir; I don't think she could, even if she had been on a direct line, she would not have intercepted me more than a second or so; she was running near a northwest course, while the other was running nearly an S. W. course, as near as I could judge.

97 Q. At that time, according to your judgment, the most distant steamer was how far distant? A. I should judge three or four miles—four miles probably—at that time.

98 Q. And the other was how far? A. From a half to three-quarters of a mile.

99 Q. Are the lights on your vessel properly arranged? A. Yes, sir.

100 Q. Are your light-boxes ar.anged according to the laws, so far as you know? A. Yes, sir.

187 101 Q. What is the color of that torchlight? A. A white light.

102 Q. How does it compare with the masthead light in color? A. About the same color; just a flare up; just a lot of turpentine.

103 Q. How long did that torch burn on your vessel? A. Hardly the sixteenth part of a second; just got it lighted; just touched the match to it. In fact, I saw the green light before he got it touched off, and I said never mind; so he stuck it right into his can then and put it out.

104 Q. Where was the steamer then; how did she bear then? A. Nearly ahead; a little on my port bow.

105 Q. After you saw her green light, did you, or not, then suppose there was any danger of collision? A. Not after I saw her green light only, showing her still working across our starboard. I knew if she held her course then there would be no danger of collision.

188 *Cross-examined by Mr. Thomas:*

1 X-Q. How far from your schooner was the more distant of the two steamers when the nearer one passed from between her and your schooner? A. About four miles, I should judge. I can't tell exactly how far. I couldn't see anything except the masthead light of the more distant one; I suppose about four miles.

2 X-Q. Bearing how with reference to your steamer? A. Bearing about a point and a half on our port bow. We were heading N. E. by E., and they were bearing N. E. half N.

3 X-Q. Was he bearing the same towards your steamer when you directed your torch to be exhibited? A. No, sir; the steamer was drawing across our starboard all the time, and she just bore very little on our port bow when I ordered the torch to be exhibited.

4 X-Q. Had it been obvious to you, up to that

time, that she was crossing your bow from port to starboard? A. Well, I judge she was crossing, because she gradually drew ahead of us all the time very slowly, and I thought she was running nearly a parallel course with us by ranging out so slowly across our bow. 189

5 X-Q. Was she directly ahead of you, or a little off your port bow, when you ordered your torchlight to be exhibited? A. No, sir; a little off the port bow.

6 X-Q. Did you see her red light simultaneously with her green light, or had you seen it before? A. No, sir; I hadn't seen either side-light before. About the time he was going to light the torch I saw the green light, and I told him. Never mind; he had seen and I had seen the green light, but the match had touched the torch at that time, and he put it out immediately.

7 X-Q. Could you see her hull? A. Not at that time.

8 X-Q. When you saw her red light, how far off from your schooner was she? A. She wasn't very far; about a quarter of a mile I should judge. She was so close that I could see her hull. 190

8½ X-Q. Bearing about how many points? A. About two points off our starboard bow.

9 X-Q. Was your red light then visible, or not, to her.

> *The Witness.*—At the time I saw his red light?
>
> *The Proctor.*—Yes.

A. No, sir; it couldn't be visible to him.

10 X-Q. Do you think it was ever afterwards visible to him? A. No, sir; not until he got across our bow.

11 X-Q. How far do you think she was when she got across your bow? A. She was into us. You mean the time when she first crossed our bow?

191 *The Proctor.*—No; after she showed her red light.

A. No; she was into us before she got across.

12 X-Q. You think, from the time she showed her red light, it was impossible for her to have seen your red light until almost at the moment of collision? A. Yes, sir; I am confident it was impossible.

13 X-Q. When she exhibited her red light, was she far enough off from your steamer to have got to your port by putting her own helm hard-a-port? A. No, sir; she was not.

14 X-Q. Did you order the helm of your schooner to be put hard-a-port as soon as you saw the red light of the steamer? A. Yes, sir. As soon as I saw his red light, I sung out hard-a-port. I then could see his hull swinging, could see it swinging, he was so close to me. I knew he was going to endeavor to recross us again.

15 X-Q. Can you describe how your sidelights 192 are arranged? A. Yes, sir. They are fixed in the forward rigging with long springs, inboard, set off on the forward end so as to be on a straight line with the keel of the vessel.

16 X-Q. Were any sails between either of those lights and the steamer? A. No, sir.

17 X-Q. Do you know at what hour, by the clock of your schooner, the collision occurred? A. No, sir. I judge it was half-past twelve, about. I know, after I had looked over the bow with the light, to see if I could tell the damage, I pulled out my watch and saw it was twenty-five minutes to one, and I judge the collision occurred about five minutes before; because I ordered a light and examined around the best I could, forward. I didn't think to look at the time it first happened.

18 X-Q. Do you know what time it was, by your clock, when you first saw the red light of the more distant of the two steamers? A. No, sir; I do

not; only a very few seconds before the collision 193
occurred.

19 X-Q. And how long before the collision had you seen her green light? A. Probably five or six minutes.

20 X-Q. Did both those lights seem to be bright and good lights when you saw them? A. I thought the green light was a little dim, because I saw the hull soon after seeing his green light. The red light flashed up very brightly, when he swung it around to me there.

21 X-Q. Is it customary to trim the signal lights of your schooner during the night? A. No, sir.

22 X-Q. Is it never done? A. Never done. It is not necessary. They hold enough of oil to burn two nights, if we wanted them to.

23 X-Q. What are the customary expenses of your schooner?

> *The Witness.*—The amount per month?
>
> *The Proctor.*—Yes. Give the wages, if 194
> you please, and other expenses. Begin with your own pay.

A. My pay is about from $125 to $150 a month. I am paid by the month a percentage on what the vessel makes. The first officer is paid $50 a month; the second officer, $40; the steward, $40; the engineer, $35, and the sailors $30, at the present time. The store bills would average about $110 a month.

24 X-Q. What other expenses are there in a round trip from Norfolk to Boston and back, loaded with coal? A. Tow bills. Our tow bills generally amount to about $40 in Norfolk, and about the same in Boston, in and out, each trip; sometimes a little less and sometimes a little more. They will average about $40. There are loading expenses—7c. a ton for loading. The consignees discharge. I think the repairs were finished on the evening of the 5th of June.

195 The following was the only evidence upon the trial of said causes in the said Circuit Court introduced on behalf of the steamer "Lepanto":

GEORGE YATES, a witness produced on behalf of the owners and claimants of the British steamship "Lepanto," and Horatio J. Wise, master of said steamer:

1 Q. Please state your age, your occupation and where do you reside? A. I am twenty-eight years of age; I am chief officer of the British steamship Lepanto; I reside at Hull, England.

2 Q. (*By Mr. Thomas.*) How long have you been chief officer of the steamship Lepanto, and to what port does she belong? A. I have been fifteen months chief officer of the same ship (the Lepanto), trading one trip to Bombay, one trip to Odessa, and four trips between Antwerp and Boston and Baltimore.

3 Q. On what voyage was the steamship Lepanto
196 on the 23d of April 1890? A. On a voyage from Antwerp *via* Boston to Baltimore.

4 Q. When did she arrive in Boston, and did she or not discharge any of her cargo there, and when did she leave? A. We arrived and docked along the Furness Wharf, at Boston, on the 18th of April; we discharged part cargo there and left on the morning of the 22d.

5 Q. At what time on the morning of the 23d of April did your watch as first officer of said steamer begin? A. It commenced at midnight up until four o'clock; my watch expired at that time.

6 Q. In changing the watch on board of said steamer, what is done in reference to the assignment of the new watch to their respective duties? A. The third officer assigns the men to their respective duties, and reports to the officer in charge of the watch that he has done so. The man that is relieved also reports it to me, on the bridge, that he is relieved by the other man.

7 Q. Who besides yourself constituted the watch 197
which began at twelve o'clock on the morning of the 23d of April 1890? A. The third officer and five able seamen.

8 Q. Who assigned the seamen to their respective duties. A. The third officer.

9 Q. Who was the third officer? A. Mr. W. Wadsworth.

10 Q. Describe, if you please, to what particular duty each of the men constituting 'the watch was assigned? A. Howard was on the lookout; H. Kilby was at the wheel, the quartermaster; the third officer was also on the bridge with me, and the other three men were standing by handy for any necessary work that was wanted to be done during the watch; they were all on the bridge at hand.

11 Q. Before you went upon the bridge, did you or not notice whether all the signal lights of your steamer were burning and in proper position? A.
Before I went on the bridge I could not see them; 198
they were forward. I go on the bridge and the third officer reports them; also the man on the lookout reports them.

12 Q. After you got upon the bridge what report was made to you, and by whom, in reference to the lights and the lookout? A. The third officer reported the lights burning brightly; he also reported to me that both the wheelsman and lookout were relieved; of course, I could see that the wheel was relieved; while the man that was on the lookout previous to Howard, before he went below, reported that he (the lookout) was relieved by Howard.

13 Q. How long after you got on the bridge was that report made? A. It was about four or five minutes after I got on the bridge that the report was made to me.

14 Q. When you got upon the bridge what was the position and what was the course of the steamship Lepanto? A. The coure was S. W. half S.;

199 our position was that Montauk light just dipped before I got on the bridge. The second officer, when I relieved him, told me that Montauk light had just dipped a few moments before; had just dipped on our starboard quarter; we had passed it and it had just gone out of sight.

15 Q. Did you or not inquire of the second officer, whom you relieved, whether or not any vessel was in sight, and if so, what report did he make to you? A. I asked him and he said No; that he had not seen any vessels during the watch.

16 Q. Did you, yourself, look to see if any were in sight, and if so, what was the result? A. I did; I took the glasses up and looked all around the horizon, and there was nothing in sight then.

17 Q. State whether or not you continued to look for objects ahead, and if so, when you first saw anything and what you saw? A. Yes, sir; I kept continually looking with the glasses up until I should say about a quarter to 1, by the time the
200 last bell had struck—that was one bell—at half-past 12; then I saw an object on the starboard bow about a point and a half.

18 Q. Was there, or not, any light on that object visible to you? A. There was no light then visible when I first saw it.

19 Q. State whether or not there were any means by which you could tell in what direction it was going? A. There were no means whatever. I took the glass to look, but could not tell which way she was going on account of her being edge on to me.

20 Q. State whether or not, when you looked with the glass, you could see any light on that object? A. No, sir; I couldn't see any light at the time.

21 Q. Did you, or not, continue to look with the glass, and if so, for what purpose? A. I continued to look at her to see if I could make out if there were any lights on her, for the purpose of ascertaining, if I could, what direction she was going,

and I suddenly saw a red light appear—a very bright red light ; just appeared very suddenly all at once. 201

22 Q. Bearing how from your steamer? A. About a point and a half on the starboard bow.

23 Q. If that red light, which you say you saw suddenly appear, had been in that position before, would you or not have seen it? A. I should have seen it.

24 Q. When you saw it, what was done on board your steamer? A. I put my helm hard-a-port to bring it on my port bow ; that is his red light.

25 Q. What effect did that have? A. I brought it on my port bow about three points. After it remained there a few seconds I saw the red light close out, and he opened out his green light on my port bow.

26 Q. What change, if any, did you make in your helm after you once put it hard-a-port? A. No change whatever ; kept it hard-a-port.

27 Q. What occurred after the red light was shut out and the green light brought into view? A. In a few seconds the schooner struck us Her boom caught one of our boat davits, on the port side, and then she struck our port quarter about twenty feet from the stern. 202

28 Q. What vessel did the one which so struck you turn out to be? A. The Cassie F. Bronson.

29 Q. Did she, or not, seriously damage the Lepanto? A. She seriously damaged the Lepanto.

30 Q. Describe, in general terms, how? A. She carried away three of our boat davits on the port side, and cracked two of our plates below the deck, also several plates above the deck, completely smashing my berth and the berth abaft mine and also smashed two of the quarter bolts.

31 Q. What was done by those in charge of the Lepanto in consequence of the collision? A. We cleared away our boat in case either the schooner or ourselves should want it ; just got it clear, ready for swinging over, ready for immediate use.

203 32 Q. Did you or not ascertain whether the Cassie F. Bronson required any assistance from the steamer? A. Yes, sir; we did; and her answer was that she was all right. That was afterwards, when we steamed close to her, as close as was prudent.

33 Q. After receiving from the schooner that answer, did the schooner or the steamer first change its position? A. It would be hard for me to say whether the schooner changed her position or not. After we asked the question—after the captain asked the name, and we did not receive any reply, but we distinctly heard them say that they were all right—then we went on our course.

34 Q. When did the Lepanto arrive in Baltimore? A. On Friday, the 25th of April.

35 Q. What has she been doing since her arrival? A. She has been discharging cargo and loading and undergoing repairs all the time.

36 Q. Are her repairs completed or not? A. No, sir; they are not.

204 37 Q. When are they expected to be completed? A. About Monday or Tuesday, not before.

38 Q. Can her loading be completed before her repairs are completed or not? A. No, sir; they cannot.

39 Q. What cargo is she to take? A. Wheat and general cargo, and 338 head of cattle.

40 Q. Why could not her loading be completed until after her repairs are completed? A. Because the carpenters cannot finish up the cattle pens for the cattle until the repairs are completed.

41 Q. How was the wind when your watch began? A. About S.

42 Q. Was the weather clear or not? A. It was clear and dark.

43 Q. At what rate of speed was the Lepanto going when you first saw the red light? A. Between ten and eleven knots per hour.

44 Q. After the red light of the schooner was shut out and the green light brought into view, why

was not the machinery of the Lepanto stopped? 205
A. Had it been stopped, the vessel would have struck us amidships, about the engine room.

45 Q. About how long before the collision was it that you first saw the red light on the Bronson? A. About three or four minutes; about three minutes as near as I could say.

46 Q. About how long before the collision was it that the red light was shut out and the green light brought into view? A. A few seconds; hardly a minute; about half a minute, I should say; from half a minute to a minute, as near as I could judge.

47 Q. Please look at the book now shown you and state what it is? A. (After inspection.) This is my log book.

48 Q. By whom was that book kept? A. By myself.

> *Note.*—It is here agreed between the proctors for the respective parties that, instead of filing the log book, the following copy of
> the entries therein, under date of Wednesday, April 23d, made by the Commissioner, may be used in evidence. 206

Log of Steamship "Lepanto" from Boston towards Baltimore.

Wednesday, April 23d. 1890.

A. M. about 0:45 moderate breeze and clear weather, but dark. An object was seen about one and a half points on the starboard bow, at the time the steamship "Lepanto" was steering S. W. $\frac{1}{2}$ S., and steaming from ten to eleven knots per hour. Wind south. I, George Yates, mate of the steamship "Lepanto," and in charge of the watch, took the vessel to be going the same way as ourselves, as she was showing no lights. Watching her care-

207 fully to make sure which way she was going, I
suddenly saw her exhibit a red light about one and
a half points on our starboard bow. I at once put
our helm hard-a-port, and brought the red light
about three points on our port bow, the helm was
kept hard-a-port. The schooner must have put her
helm to starboard as she opened out her green
light, and closed in her red light on our port bow.
A collision occurred two or three minutes after first
seeing the red light, she striking us on the port
quarter and doing considerable damage. The man
at the wheel and lookout man, also the third offi-
cer, who was on the bridge at the time, all saw the
red light suddenly appear about two or three min-
utes before the collision. The engines were stopped
as soon as the schooner was clear of us; had they
been stopped before, she would have struck us
about the engine room. The schooner's boat came
alongside holding up a lamp to read our name. We
gave our name and asked for his, but could not
208 make out his reply, for he pulled away imme-
diately. After looking to our damage, we steamed
towards the schooner, asked for her name, but got
no answer.

On the Lookout.

From	6 P. M. to	8 P. M.,	Wickeman.
"	8 "	10 "	Kenward.
"	10 "	Midnight,	Heward.
"	Midnight to	2 A. M.,	Howard.
"	2 A. M. to	4 A. M.,	Sarkage.
"	4 "	6 "	Kenward.
"	6 "	8 "	Heward.

Lantern hung out from sunset to sunrise.

49 Q. What part of the schooner struck the steamer? A. The stem—her cutwater. I know that because her bobstay was left on board; also, part of the scroll work of her fidley-head.

Cross-examined by Mr. Smith : 209

1 X-Q. What is the size of the Lepanto—what is her registered tonnage? A. 1,489 tons.

2 X-Q. What does she carry? A. About 3,000 tons, all told.

3 X-Q. Were the stars shining that night? A. They were, a little. They were sometimes out and sometimes they were not. Sometimes it was sort of clouded over, but it was clear.

4 X-Q. What was the wind—a strong breeze or a light breeze? A. It was a light breeze; about a moderate breeze.

5 X-Q. Did you see any vessel after you came on your watch before you saw the lights on the Bronson? A. No, sir; I saw no lights whatever.

6 X-Q. And no vessel either? A. No, sir, no vessel.

7 X-Q. Did you meet any vessels after the collision? A. I did not, in that watch.

8 X-Q. In other words, you saw no vessel during the watch from twelve to four that morning except the Bronson? A. That is all. 210

9 X-Q. Were you on the bridge from the beginning of your watch until the collision? A. Yes, sir.

10 X-Q. You had not been off? A. Never had been off the bridge.

11 X-Q. Had you received any reports at all from the lookout? A. No, sir; only the lookoutsman reported the red light.

12 X-Q. Who first saw this dark object? A. The third officer and myself saw it about the same time.

13 X-Q. Where was the third officer? A. He was on the bridge—on the upper bridge.

14 X-Q. What was he doing? A. Keeping a lookout with me.

15 X-Q. What was said when it was first seen? A. I never said anything but took up the glass and looked at it, and, as I spoke, he said " What is

211 that?" or something to that effect. I cannot exactly remember his very words, but he said "There is something there."

16 X-Q. What did you first say? A. I said "There is something there. I see something"; just like that.

17 X-Q. Before you took up your glass? A. No, sir. As I took the glass up and looked, I never said anything. I got the glass in my hand and looked, and I said: "I see something there," and he said to me: "Yes, I think I see something, too"; and he has very good eyesight, the third officer has.

18 X-Q. Did you take up your glass because you saw something? A. No, sir; I took my glass up to see if I could see anything. I looked generally around the horizon, all around.

19 X-Q. It was not until you had taken up your glass and looked through the glass that you saw a dark object? A. That is all.

212 20 X-Q. What did the glass show you—what did it indicate to you? A. Just merely a black form; just like a dark stroke.

21 X-Q. You could not see the outlines of a vessel? A. No, sir; I couldn't make anything out of it, only this black object.

22 X-Q. How far did it appear to be off when you saw it? A. Well, I should say, as near as I could judge, about a quarter of a mile, perhaps not so far. She looked to be farther off, being like undecided, and you couldn't say which way she was going at all, and she looked farther off. I just seen the dark object.

23 X-Q. Did you immediately give an order to hard-a-port your helm? A. No, sir; I didn't alter the helm.

24 X-Q. You did not make any change in your helm until you saw the red light? A. No, sir.

25 X-Q. How do you account for not seeing the red light sooner? A. The only way I can account

for not seeing the light must have been because it 213
was inboard, or obscured. If it had been in its proper place, I should have seen it. I should have seen that light three miles off, the way they are elevated, at least.

26 X-Q. It was a very bright light; was it? A. Yes, sir; a very bright red.

27 X-Q. Did you continue to see it until it was shut in, until it got on the port bow. I followed the light all the time.

28 X-Q. Did it seem to be a light which vessels usually carry on their port side? A. Yes, sir.

29 X-Q. When you saw the green light, was that a bright green? A. Yes, sir.

30 X-Q. Such as vessels usually carry on their starboard side? A. Yes, sir.

31 X-Q. How far was that green light from you when you first saw it? A. It would only be about a ship's length, or so, or perhaps a little more—two ship's length, perhaps.

32 X-Q. If the object which you first saw had 214
been going in the same way that you were going, would you have struck it if you had held your course? A. No, sir; we should have gone clear of it.

33 X-Q. But you could not tell which way it was going? A. No, sir, I could not.

34 X-Q. Would it not have been safer for you to have stopped your engines immediately upon seeing the dark object? A. No, sir; I cannot say that it would.

35 X-Q. It would certainly have been, if the vessel was going the same way that you were, would it not? A. If the vessel had been going the same way, we should have been clear of it.

36 X-Q. Did you see that object as soon as it was possible to see it without a light? A. Yes, sir.

37 X-Q. When you saw the red light how far was it off? A. Well, I should say about four or five ship lengths, as near as I could judge.

215 38 X-Q. Did you not, as a matter of fact, see the red light at almost the same moment that you saw the dark object? A. Not at the same time; I saw it, perhaps, a minute after; as near as I could say, a minute after.

39 Q. Did you take the glasses from your eyes after seeing the dark object and before seeing the red light? A. I took the glasses from my eyes, yes, sir.

40 X-Q. You did not continue to look at the object with the glasses until you saw the red light? A. Not right up to the time; I had put the glasses down, if I rememember rightly, when I saw the light; I did not see the red light first through the glass; I saw it with my naked eye first; it came out suddenly, like that (showing).

41 X-Q. Did you and the third officer consult as to what you should do? A. No, sir; I gave the orders at once to hard-a-port when I saw the red light.

216 42 X-Q. I mean as soon as you saw that dark object, did you and he consult about what should be done? A. No, sir; there was no consultation whatever.

43 X-Q. There was no time, was there? A. There was no time.

44 X-Q. As a matter of fact, was not the time between your seeing that dark object and the collision but a few moments? A. It was but a few moments.

45 X-Q. What course was your vessel heading when the schooner struck you? A. That I could not swear to, because I never looked at the compass; I was over on the other side of the bridge looking at the vessel, with my hand on the telegraph.

46 X-Q. Would the man who was at the wheel know? A. I couldn't say whether he would know or not; I never asked him

47 X-Q. Did your steamer go off rapidly? A.

217 Yes, sir; she went off, paid off rapidly; she answers her helm very well.

48 X-Q. How many points do you think she went to starboard? A. That I really could not say, not at the time she struck; I should say she paid off, perhaps, five points; I know she paid off four, while bringing the other vessel about three points on the port bow.

49 X-Q. What course do you suppose the schooner was on when you saw her red light first? A. Well, I should say somewhere about N. N. E. or N. I couldn't exactly tell the exact course; I didn't have a chance to see her true position. She might have been going from about N. to E., the way I saw that light.

50 X-Q. Is S. W. half S. the course usually taken at that point on the voyage? A. Yes, sir.

51 X-Q. Was your vessel then loaded? A. Partly loaded; not loaded; we had discharged part of the cargo at Boston; we were about half loaded, I should say. 218

52 X-Q. What was she drawing then, about? A. Her draught was about sixteen feet, eight or ten aft, and about fourteen feet, five or six forward.

53 X-Q. Were you carrying sails? A. No, sir; we had no sails set.

54 X-Q. At what angle, about, did the two vessels strike? Was it near a right angle? A. No, sir; it would be about an angle of forty-five degrees, or hardly that; about that, I should say, by the dent in the ship's side.

55 X-Q. Do you mean the angle between your port bow and the schooner's port bow was about forty-five degrees? A. It would be about that, as near as I could say.

56 X-Q. Did you see the schooner's red and green lights both before the red light was shut in? A. No, sir; I saw the red light shut, and then she opened out her green light.

57 X-Q. After the collision did you see both her

219 lights? A. No, sir; after the collision I didn't see any light at all, because I came down as soon as she was clear; I came from off the bridge and called the captain. Of course, the captain was out, and I made aft to see the damage that was done; but I never noticed her lights at all after she was struck.

58 X-Q. Was the Lepanto fitted up for cattle when she came on this voyage, when she arrived? A. No, sir; the fittings have been put up since we have been here.

59 X-Q. Did she commence discharging as soon as she arrived? A. Yes, sir.

60 X-Q. When did she finish discharging? A. She finished discharging Wednesday morning.

61 X-Q. What was her cargo here to Baltimore? A. 520 tons of speigle iron; also about 200 bales of cotton waste that we got in at Boston; also about 300 tons, as near as I could say, of cement, taken in at Antwerp; also about twenty-five kegs of gin and about forty tons of general cargo.

220 62 X-Q. Did she continue discharging cargo from the time she arrived until Wednesday morning? A. Yes, sir.

63 X-Q. Were the cattle fittings being put up while she was discharging? A. Some of them were, yes, sir.

64 X-Q. When did they commence putting them up? A. They commenced the day after we got in; they started Monday morning to fit them up; they brought their materials on Saturday and began work on Monday morning.

65 X-Q. Have they been working ever since on them? A. Yes, sir; up until yesterday. I think they were detained yesterday on account of the men working on the repairs.

66 X-Q. When did you commence loading? A. We commenced Tuesday. Monday we took in some grain; took in stiffening for the ship, to load the grain.

67 X-Q. Have you been loading every day since? A. Yes, sir.

68 X-Q. In the way she usually loads? A. We have been detained by bringing the ship over to Brown's wharf for repairs. 221

69 X-Q. What did you take her over there for? A. To forward the repairs ; so that the ship would be close to Spedden's works.

70 X-Q. Were you not loading while she was lying there? A. We were loading, but under very difficult circumstances; we could not load as we should have done ; could not get the lighters in.

71 X-Q. Was there anything damaged more than two or three plates? A. There were the davits, and the two bolts and two plates cracked, and of course, all the front of the cabin was broken, two berths completely smashed up, and also part of the the poop deck, and also a lot of small wood work, the boat skids, that the boats were on.

72 X-Q. When your wheel was hard-a-ported, you were on a course S. W. half S.? A. Yes, sir.

73 X-Q. Your vessel under a hard-a-port helm would make a circle, would it not? A. Yes, sir. She would not make a complete circle. 222

74 X-Q. She would forge ahead at the same time that she was paying off? A. Yes, sir.

74 X-Q. If you were nearly ahead of the schooner when you saw her red light and the schooner was heading nearly in an opposite course from yours, would not the movement of your vessel carry her across the bow of the schooner so as to open up her green light before you got on the course on which they struck? A. No, sir. If I had seen the red light ahead, in the first place, and she was going nearly in the oposite direction, I should have seen both her side lights ; and if the red light had been ahead, I should have gone all the more clear of her.

76 X-Q. The time between your seeing the red light and the green light was but a moment, was it not? A. A few seconds.

223 77 X-Q. So that, if you were nearly dead ahead of the schooner when you first saw the red light bearing on your starboard bow, if you continued on that course in a moment you would have opened her green light, would you not? A. No, sir.

78 X-Q. Why not? A. Because the green light would have been shut from me. It ought to have been shut out, if in a proper position and properly screened.

79 X-Q. If your course was S. W. half S., and the schooner's course N. E. by E., would those courses cross each other? A. Yes, sir; they would.

80 X-Q. When you crossed the schooner's course, you would see both lights, would you not? A. No, sir; not necessarily so. If the lights were not fitted properly, I might have seen the green light across her bow, but then I ought not to do so.

81 X-Q. Are not the lights on all vessels so arranged that when you are dead ahead you see both 224 lights? A. Yes, sir; of course, the vessel could be dead ahead of you and be crossing your bow. But, if both vessels are coming head on, or nearly so, you must see both lights.

82 X-Q. If the schooner was coming on the course N. E. by E., when you crossed that course and were dead ahead of her, you would not see both her lights? A. No, sir.

83 X-Q. Why not? A. I would only see her port light. I couldn't see the lights across her bow, her green light.

84 X-Q. Can you be dead ahead of a vessel and not see both her lights, if they are properly set? A. If the vessel is coming in the opposite course, you must see them. But if she is not coming in the opposite course—for instance, the vessel could be dead ahead of you, and of course be going across your bow, and then I could only see which way she was passing.

85 X-Q. Without reference to whether you were heading in a directly opposite course to hers, suppose she is heading directly for you, will you not see both her lights? A. Yes, sir; supposing she is heading directly towards us. 225

86 X-Q. If, then, you see the schooner's red light on your starboard bow, you heading S. W. half S., and she heading N. E. by E., if you cross that course, would you not see both her lights? A. No, sir.

87 X-Q. How could you cross the schooner's course without seeing both her lights when you cross that course? A. Because her green light would be shut in as to me.

88 X-Q. Would you be dead ahead of her if you only saw her green light? A. She could be dead ahead of me and I only see her green light.

89 X-Q. I say, could you be dead ahead of her and not see both her lights? A. I could see both her lights if we were dead ahead of her.

90 X-Q. Are you not bound to see both her lights if you are dead ahead of her, if they are properly set; that is, crossing her course? A. Yes; I could see both her lights if she was head on to me. 226

91 X-Q. Are there any masts forward of your bridge? A. One mast.

92 X-Q. Is there anything else forward of the bridge as high as the bridge? A. No, sir.

93 X-Q. Were you on the same bridge as the wheel? A. Yes, sir.

94 X-Q. You were not then on the upper bridge? A. I was on the upper bridge.

95 X-Q. How many bridges are there on your vessel? A. Two.

96 X-Q. On which bridge were you? A. On the upper bridge.

97 X-Q. On which bridge is the man at the wheel on a level with? A. On the upper bridge.

98 X-Q. Is there a wheel on a level with the

227 lower bridge also? A. Yes, sir; and one lower than that again.

99 X-Q. Which wheel were you using that night? A. The one on the upper bridge. All of the wheels are controlled by the same machinery, and are all worked by steam.

100 X-Q. But there is only one helmsman? A. There is only one helmsman on duty at a time.

101 X-Q. And he was on the upper bridge? A. Yes, sir.

Re-examined by Mr. Thomas:

1 R-D-Q. You have said that the lookout reported to you the red light. Was that before or after you had seen it, or about the same time? A. It was about a few seconds after I had seen it. I saw it a few seconds before the man reported it.

2 R-D-Q. Did he, or not, report the schooner before he reported the red light? A. No, sir.

228

William Holmes Wadsworth, a witness produced on behalf of the owners and claimants of the S. S. Lepanto, being by me first duly sworn, deposes and says, as follows:

1 Q. State your age, your occupation and where do you reside? A. I am twenty-nine years of age; I am third officer of the British S. S. Lepanto; I live at Salem, England.

2 Q. (*By Mr. Thomas.*) How long have you been the third officer of the steamship Lepanto? A. This voyage.

3 Q. What do you mean by this voyage—from Antwerp via Boston to Baltimore? A. Yes, sir.

4 Q. At what hour on the morning of the 23d of April 1890, did your watch on board the Lepanto begin? A. Twelve o'clock, midnight.

5 Q. Did you or not actually go on duty at that hour? A. Yes, sir; I went on duty then.

6 Q. What, then, if anything, did you do towards 229 assigning the crew to their respective duties? A. I told Howard to go upon the lookout and relieve the man who was then on the lookout? I told Kilby to go to the wheel and relieve the man then there; and then I went forward to see if the lights were burning brightly. After giving these orders I saw that Howard went to his position on the lookout; I saw that the lights were all right and burning brightly and all in proper position, and then I came from forward to aft, and went on the upper bridge and reported to the mate that the lights were burning brightly and Howard was on the lookout.

7 Q. What was Howard's rank and what position did he assume in the discharge of his duty as lookout? A. He was able seaman and he went forward on the forecastle head.

8 Q. After you went on the bridge and reported to the first officer, who was in charge of the watch, what you had done and who was acting as lookout, 230 did anyone else make a similar report to him? A. Yes; the man who had preceded Howard as lookout, when he left his position, he came aft and reported to the first officer that he had been relieved by Howard.

9 Q. Was that, or not, in accordance with the uniform usage on your steamer? A. Yes, sir.

10 Q. Where was the chief officer, on what part of the bridge was the first officer, and on what part of it did you take your position? A. I took a position on the port side of the bridge. The first officer walked amidships at the time, but he walked from one part of the bridge to the other, from the starboard side to the port side —walked on the bridge from the starboard to the port side of the steamer.

11 Q. State whether or not you looked in every direction to see whether there were vessels near you or not, when your watch first began? A. Yes, I

231 did. That was the first thing I did when I came on the upper bridge, to have a good look around.

12 Q. What did you see? A. I didn't see anything.

13 Q. At about what hour did you first see any object near you? A. About twenty minutes to one o'clock.

14 Q. What was that object? A. I can't tell very well. It was something in the shape of a ship or something.

15 Q. What did it seem to you to be? A. It seemed to be like a ship going the same way as ourselves.

16 Q. Did you notice whether or not there was any light on her visible to anybody on board your steamer? A. No, sir; there was none at all.

17 Q. Did you notice with a glass? A. Yes, sir; there were two pair of glasses on our bridge.

18 Q. With the glass could you tell whether there
was any light on her in a position visible to your
232 steamer? A. No; there was no light at all; not
that I could make out.

19 Q. What did you afterwards see on this object? A. I saw a red light suddenly appear.

20 Q. Bearing in what direction from the Lepanto? A. About one and a half points off our starboard bow.

21 Q. If that light had been on the object which you first saw, in a position visible to any one on the Lepanto, would you, or not, have seen it? A. I would, of course, have seen it, because I could see the vessel ahead.

22 Q. Both, with the naked eye and with the glass? A. Yes, sir; I could see better with the naked eye than I could with the glasses; and if there had been a light on her in a position visible, I could, of course, have seen that.

23 Q. After this red light was observed, what was done on board the Lepanto? A. The mate told the helmsman to port.

24 Q. To port or hard-a-port? A. To hard-a- 233
port.

25 Q. Was that order given immediately upon seeing the red light, or did an interval of time elapse? A. No, sir; not an interval. It was given immediately upon the appearance of the red light.

26 Q. State whether or not it was obeyed? A. It was.

27 Q. Immediately or not? A. It was.

28 Q. What effect did the execution of that order have upon the Lepanto? A. It brought that red light about three points off the port bow of the Lepanto.

29 Q. When that red light was about three points off the port bow of the Lepanto, was or not, any green light visible on the object upon which the red light appeared? A. The green light was visible directly after she got three points on the port bow—suddenly turned to green.

30 Q. What do you mean by suddenly turned to 234
green? A. The red light was shut in.

31 Q. And the green light appeared? A. Yes, sir.

32 Q. Were both those lights visible to you at the same time? A. No, sir.

33 Q. After the red light was shut out and the green light brought into view, what occurred? A. After the green light came into view, about one minute elapsed before the approaching schooner came into collision with us. The helm of the Lepanto was hard-a-port all the time.

34 Q. How did the approaching schooner, the Cassie F. Bronson, strike the Lepanto? A. She first struck abaft the bridge on the port side, and afterwards the port quarter.

35 Q. How did the vessels become disengaged? A. After the schooner had struck the steamer, as I have described, she passed astern of us.

36 Q. Did a boat from the schooner come near

235 the steamer, after the collision, or not ? A. Yes, sir. The schooner's boat came alongside of us after the collision and we hailed him and asked him his name. At first he asked us our name. We told him. Then we sung out for him to give us his name, but we couldn't make it out, because he was going away all the time. He stopped astern of us, and held a lantern up on a boat hook to read our name.

37 Q. Did you or not ascertain whether the schooner required any assistance from the steamer before you left her ? A. I asked them in the boat if they wanted any assistance, and they said no.

Cross-examined by Mr. Smith :

1 X-Q. How was the weather that night ? A. Fine—very fine—starlight.

2 X-Q. What was the direction of the wind ? A. About S. W., I think.

3 X-Q. Was it light ? A. Yes, sir ; very light.

236 4 X-Q. Who first saw this object ahead of you ? A. The mate.

5 X-Q. What did he say ? A. He called me over to his side of this bridge. I went to look at it, but I couldn't see any lights visible on it.

6 X-Q. What did it look like ? A. It looked to me like a schooner was running.

7 X-Q. Which way ? Before the wind. But then it could not have been running because the wind was right ahead.

8 X-Q. It looked like a schooner going in the same direction that you were going ? A. Yes, sir.

9 X-Q. Not broadside to you ? A. No, sir ; it looked like a schooner ; no doubt about that.

10 X-Q. It looked like a schooner either coming towards you or going away from you ? A. Yes, sir.

11 X-Q. Was she coming towards you or going from you ? A. I didn't know then.

12 X-Q. Do you know now? A. Yes, sir; I do. 237

13 X-Q. Which way was she going? A. She was coming towards us.

14 X-Q. Why, then, did you not see her lights sooner? A. We didn't see her lights.

15 X-Q. Why not? A. Well, I don't know. I know that I have got very good eyesight; and I am sure that I can see a light, if anybody can.

16 X-Q. You did see the green light, did you not? A. Yes, sir; I saw it appear suddenly.

17 X-Q. Did it seem as though something had gone between you and that vessel? A. No, sir. What could go between us? What could go between our side light and another ship, except it was another ship?

18 X-Q. Do you think another vessel might not have gone between you? A. Yes, sir; I am sure of it.

19 X-Q. Why not? A. Because it was such a light night, you could see everything plain. 238

20 X-Q. How far could you see an object without a light? A. About a mile or two miles.

21 X-Q. Was that object a mile off when you saw it first? A. Yes, sir; I should think it would be, or very near.

22 X-Q. What order was given on your vessel when you first saw that object—any? A. None.

23 X-Q. How did it bear at first? A. Well, it bore about S. W. by W.

24 X-Q. I mean on which bow of your steamer? A. On the starboard bow.

25 X-Q. How far? A. About one and a half points.

26 X-Q. Did you pick up your glass the moment the mate spoke to you about the object? A. Yes, sir.

27 X-Q. Was it on your side of the bridge? A. No, sir; it was on the mate's side.

28 X-Q. Did you see this red light first through

229 the glass or with the naked eye? A. With the naked eye.

29 X-Q. Before you looked through the glass? A. Yes, sir.

30 X-Q. Afterwards you took the glass and looked? A. Yes, sir.

31 X-Q. When the red light appeared, how far did it seem to be off? A. About half a mile, I should say, or a quarter of a mile.

32 X-Q. It was so long from the time you first saw the object until you saw the red light that your two vessels had gotten from a mile apart to within quarter of a mile? A. Two minutes; I am sure of that.

33 X-Q. Did you continue to watch that object from the time you first saw it until the red light appeared? A. Yes, sir.

34 X-Q. Did it bear all that time a point and a half on your starboard bow? A. Yes, sir.

35 X-Q. And you were getting nearer all the
240 time? A. Yes, sir.

36 X-Q. You did not stop your engines? A. No, sir.

37 X-Q. Up to the time that you saw the red light the object bore on your starboard bow a point and a half?

> *The Witness.*—Do you mean when I first saw the red light?
>
> *The Proctor.*—Yes.

A. Yes, sir; on the starboard bow a point and a half; and then the helm was hardported.

38 X-Q. What was your course? A. S. W. half S.

39 X-Q. How do you know that? A. I heard the man at the wheel give it to the mate.

40 X-Q. When? A. When he came off the bridge.

41 X-Q. After the collision? A. No, sir; I heard

him sing it out to the mate. He went up to the mate and said: S.W. half S. 241

42 X-Q. When was this? A. When the watch was relieved; before I went forward.

43 X-Q. You mean at the beginning of that watch? A. Yes, sir; before I went forward to see after the lookout.

44 X-Q. Did the lookout make any report of this vessel? A. He did not, until he saw the red light.

45 X-Q. Did you see the red light before he reported it? A. Yes, sir.

46 X-Q. What did he say when he reported it? A. He said: A red light on the starboard bow.

47 X-Q. And you had seen it before that? A. I was just going to sing out to him.

48 X-Q. Was the helm a-port when he sung out? A. Yes, sir. He sang out about the same time that the mate put the helm hard-a-port.

49 X-Q. Did you see the red and green lights both at the same time? A. No, sir.

50 X-Q. The red light was shut out as soon as the green light appeared? A. Yes, sir. 242

51 X-Q. Your engines were not stopped until after the collision? A. No, sir.

52 X-Q. What speed was she making? A. About ten and a half knots.

53 X-Q. Did you see any other vessels after you came on the watch at twelve o'clock up to the time of the collision? A. No, sir.

54 X-Q. Did you see no lights? A. Shore lights.

55 X-Q. Did you see no lights on vessels? A. Not that I can remember.

56 X-Q. Of no kind? A. No; not that I can remember.

57 X-Q. No steamers? A. I wouldn't be sure now.

58 X-Q. Try and remember whether you saw any steamer's lights? A. (A pause.) I can't recollect.

243 59 X-Q. There was nothing that specially attracted your attention until you saw this dark object, and then the red light? A. No, sir.

60 X-Q. About what angle was there between the two vessels when they struck; did the schooner strike you square on, or at an angle? A. At about an angle of about forty-three degrees.

61 X-Q. How soon after the collision did you stop the engine? A. Directly she got clear of us.

62 X-Q. Did you sail towards the schooner? A. We did, afterwards.

63 X-Q. Before her boat came towards you? A. No, not before her boat came towards us. We sailed towards her afterwards. We tried to get her name again, but could not. They didn't answer us.

64 X-Q. Did you give the name of your steamer? A. Yes, sir.

65 X-Q. Who did? A. I did.

66 X-Q. Where were you standing? A. On the
244 quarter, where she had broken in.

67 X-Q. Was her boat off that quarter? A. Yes, sir.

68 X-Q. What did they ask you? A. I asked them, first, what was the name of their ship, and they asked me what was the name of our ship. I said the Lepanto. They bore away; they didn't stop at all. I sung out to them again, what is the name of your ship? They said something, but I couldn't hear them.

69 X-Q. Did they pull up under your stern? A. Yes, sir; and put a light on a boat hook under our stern to look at the name. So, I suppose, they hadn't got our name.

70 X-Q. Is your vessel loaded except her cattle? A. I don't know, sir.

GEORGE HOWARD, a witness produced on behalf of the owners and claimants of the steamship Lepanto, being by me first duly sworn, deposes and says as follows: 245

1 Q. What is your age, your occupation, and where do you reside? A. I am nineteen years of age; I am an able seaman; I live at Kent, England.

2 Q. (*By Mr. Thomas.*) How long have you been an able seaman? A. This trip is my first trip as an able seaman on board of a steamer. I had been an able seaman before on a sailing vessel.

3 Q. Have you had much experience as a lookout? A. Yes, sir; that is what I have had all the time.

4 Q. For about how many years? A. Well, about two years.

5 Q. Of what steamer are you now an employe? A. I am an employe of the Lepanto.

6 Q. At what hour of the morning of the 23d of April did your watch on board the Lepanto begin? 246
A. From 12 to 4. It was my lookout from 12 to 2.

7 Q. What officers were in charge of that watch? A. The chief officer and the third officer.

8 Q. When your duty as lookout began, what position did you take on board the steamer—where did you stand? A. Walking from the starboard to the port side of the ship, on the forecastle head.

9 Q. How far from the bow were you stationed? A. I should say about eight to ten feet.

10 Q. When your duty as lookout began, did you or not look in every direction for the purpose of seeing whether any object was near you, or any light visible? A. Yes, sir.

11 Q. What did you see at first? Could you see anything at first? A. No, sir; I could see nothing of the schooner, not until she showed her light.

12 Q. You could see nothing at first, at 12 o'clock? A. No, sir.

13 Q. About how long after your watch began did

247 you see any object ahead of you? A. I saw none until I saw the schooner.

14 Q. Do you mean the schooner or the light? A. The light.

15 Q. What light did you see? A. Her red light.

16 Q. Bearing how from your steamer? A. Bearing a point and a half on the starboard bow.

17 Q. Did you report it, or not? A. Yes, sir; right away.

18 Q. What, if any, change of course was made by the Lepanto after that simultaneously with your reporting this red light? A. Her head was paid off to starboard.

19 Q. Over which bow did you then see the red light? A. In a short time after that I saw the red light on to the port bow I should say about two points and a half to three points, as near as I could judge.

20 Q. Could you then see any green light on the 248 object ahead? When you first saw the red light on your port bow could you see any green light? A. No, sir.

21 Q. What afterwards happened? A. She suddenly opened her green light and she shut her red light in. I said to myself, at the same time, there is a collision.

22 Q. How long after you first saw her red light was it before the collision? A. Well, I should say two or three or four minutes.

23 Q. And about how long after you saw the green light was it before the collision? A. Well, I don't know that. I didn't take no notice of the time then. I was watching her all the time.

24 Q. Was the time very short? A. Yes, sir.

25 Q. How did the schooner, upon which you had seen these lights, strike the Lepanto? A. Well, she struck just abaft the bridge. She was sliding along the ship's side, like, and all of a sudden she crashed into our quarter.

26 Q. Were the engines of the Lepanto stopped after the collision? A. Yes, sir. 249

27 Q. State whether or not a boat from the colliding schooner afterwards came to the Lepanto? A. Yes, sir; came alongside and said something. I didn't catch what they were saying. I heard some one ask for the name of the schooner, but I didn't catch what was said in reply.

28 Q. From the time your duty as lookout began up to the time of your seeing the red light, what were you doing? A. I was walking to and fro on the forecastle head, looking after the lights, or any object that I could see.

29 Q. Had you looked in the direction of the schooner before you saw the red light? A. Yes, sir; I was looking well ahead, off the bow and all around.

30 Q. If a light on board the Bronson had been burning and in a position to be visible to any one aboard the Lepanto, before you saw her red light, would you, or not, have seen it? A. Well, I should say I would. 250

31 Q. Why would you say so? A. If there was any light at all I would be able to see it.

32 Q. Had you, or not, been looking in that direction? A. Yes, sir; I had been looking in that direction; I had been keeping a good lookout.

Cross-examined by Mr. Smith:

1 X-Q. What kind of weather was it that night, in your watch? A. Fine weather.

2 X-Q. Stars shining? A. Yes, sir.

3 X-Q. How far could you see—I do not mean a light, but how far could you see an object? A. I don't know, sir.

4 X-Q. About how far? A. I couldn't give no judgment.

5 X-Q. Why not? A. I have got no judgment for that, how far I could see.

6 X-Q. Did you see any other vessels during

251 your watch? A. I hadn't seen none up to the time of this schooner.

7 X-Q. This was the first one that you saw and reported? A. Yes, sir.

8 X-Q. Up to that time had you seen any vessel's lights anywhere? A. No, sir.

9 X-Q. No kind of lights? A. No, sir.

10 X-Q. Had you seen nothing while you had been on the watch? A. I was relieved at half-past 3.

11 X-Q. Had you seen nothing in that watch from 12 o'clock until you saw this red light on the schooner? A. No, sir; I never saw nothing.

12 X-Q. Did you hear some one from the bridge say something about the light before you reported it? A. No, sir.

13 X-Q. Did they say anything to you on the bridge about the light?

The Witness.—After I reported it, do you mean?

252 *The Proctor.*—At any time.

A. Yes, sir; I sung out to the chief officer, Red light on the starboard bow; he said, All right, and the ship started to pay away to starboard directly.

14 X-Q. When you saw that red light, could you see the vessel, too? A. No, sir; I could only see the red light.

15 X-Q. Could not see the hull? A. No, sir.

16 X-Q. Could not see the masts? A. No, sir.

17 X-Q. Nor the sails? A. No, sir; not until she got right alongside of us.

18 X-Q. What did you see then? A. I saw her come into us.

19 X-Q. How far do you think that red light was off when you first saw it? A. Well, I don't know.

20 X-Q. A mile? A. No, sir.

21 X-Q. Half a mile? A. I couldn't say how far I saw her off.

22 X-Q. Give us as nearly as you can? A. I can't. 253

23 X-Q. Was it near? A. Yes, sir. It sprung up all of a sudden. I thought to myself, well, you have come from somewhere pretty smart.

24 X-Q. Why did you not see that light sooner? A. Because it wasn't there to see.

25 X-Q. Where was it? A. Off the starboard bow.

26 X-Q. Where was it before you saw it? A. Well, I expect it was under the case.

27 X-Q. Do you mean it was lit? A. I don't know whether it was lit or not.

28 X-Q. That schooner was coming towards you when you saw it? A. Yes, sir; it was coming towards our starboard bow then.

29 X-Q. Was it not a very short time after you saw the red light that the vessels struck? A. A very short time.

30 X-Q. You did not have time to do anything on your vessel, scarcely, had you? A. No, sir. 254
As soon as their helm was shifted she was way on our port bow.

31 X-Q. Then they were together, were they not? A. Yes, sir.

32 X-Q. Your vessel was going pretty fast, was she? A. Yes; she was going pretty fast through the water.

33 X-Q. Did you stay on the forecastle head until she struck? A. When she struck I staid on there; when she give two or three rolls I heard some one sing out something about lifeboats; I dropped my coat and went aft and helped to clear her away.

34 X-Q. The first officer and the third officer say they saw the dark object ahead before they saw the red light. Did you? A. No, sir. They had a better view of everything from the bridge than from what I had from the forecastle head.

35 X-Q. Why? A. You can see anything

255 quicker from the bridge than from the forecastle head.

36 X-Q. How far were you from the bridge where they stood? A. They were abeam of the ship, and where I stood was the bow.

37 X-Q. They were about amidships, were they? A. Yes, sir.

38 X-Q. Weren't you a good deal nearer to the object than they were? A. Yes, sir.

39 X-Q. Then why could you not see it quicker than they could? A. I think they could see a little bit better from there than I could on the forecastle head.

40 X-Q. You did not see this dark object before you saw the light? A. No, sir.

41 X-Q. So they saw the dark object before you did? A. Yes, sir.

42 X-Q. Is your sight good? A. Yes, sir.

43 X-Q. Where did you join the ship Lepanto? A. In Antwerp.

256 44 X-Q. Have you ever been examined for color blindness? A. Yes, sir; once; that was a long time ago.

45 X-Q. Where? A England.

46 X-Q. Had you ever been in a collision before? A. No, sir.

47 X-Q. Have you ever made any but the two voyages across the Atlantic? A. That is all. I came from San Francisco to New York, and from New York went across to Antwerp.

48 X-Q. Where is your home? A. At Kent, England.

49 X-Q. Did you go on the lookout again after the collision? A. Yes, sir.

50 X-Q. Did you see any vessels after that? A. Yes, sir; the schooner came near us again, and there was a boat went past us, a good bit from us.

51 X-Q. Only one? A. That is all I seen.

52 X-Q. What did you see on that boat? A. I just saw a stay light.

53 X-Q. Do you mean her bright light? A. Yes, sir. 257

54 X-Q. Was this red light burning brightly when you saw it first? A. Yes, sir; it was a very bright red light.

55 X-Q. And was there a green light also? A. Yes, sir. They looked to be good lights.

56 X-Q. Did you see them after the collision? A. When the schooner came around us I saw them.

57 X-Q. Were they burning then? A. Yes, sir.

58 X-Q. Could you tell how the wind was that night? A. No, sir; the way we were steaming the wind was right ahead of us, a little on the port bow.

59 X-Q. Was it blowing light or strong? A. There was a middling breeze.

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258 HENRY KILBY, a witness produced on behalf of the owners and claimants of the steamship Lepanto, being by me first duly sworn, deposes and says as follows:

1 Q. What is your age, your occupation, and where do you reside? A. I am twenty-one years of age; I am an able seaman; I live at Filey, Yorkshire, England.

2 Q. (*By Mr. Thomas.*) How long have you been going to sea? A. About four and a half years.

3 Q. How long have you been an able seaman? A. About eight months.

4 Q. Have you or not had much experience as wheelsman? A. I have always taken the wheel since I have been going to sea, from about the first two months after going to sea.

5 Q. To what vessel are you attached and in what capacity? A. To the steamship Lepanto as able seaman.

259 6 Q. How long have you been serving on board the Lepanto in that capacity? A. Seven months.

7 Q. At what hour on the morning of the 23d of April, did your watch on board the Lepanto begin? A. Twelve o'clock midnight.

8 Q. To what duty were you then assigned? A. To the wheel, steering the ship.

9 Q. At what hour did you take charge of the wheel? A. At twelve o'clock.

10 Q. Where is the wheel? A. On the upper bridge.

11 Q. What other officers were on the upper bridge while you were in charge of the wheel? A. The chief officer and the third officer.

12 Q. What was the course of the Lepanto when you took charge of the wheel? A. S. W. one-half S.

13 Q. Did you or not continue that course? A. Continued that course.

14 Q. Did you see any vessel in the neighborhood of the Lepanto when you first took the wheel? 260 A. No, sir.

15 Q. When and how did you become aware of the approach of the schooner Cassie F. Bronson? A. When the chief officer told me to put the helm hard-a-port, I looked up then, and that was the first time that I saw her.

16 Q. What did you see? A. I saw a red light about a point and a half on the starboard bow.

17 Q. Did you see that the first time you looked? A. Yes, sir.

18 Q. What did you do in consequence of the order to put your helm hard-a-port? A. Put it over hard-a-port.

19 Q. How is your helm operated—by steam or otherwise? A. By steam.

20 Q. Does your steamer obey her helm readily or otherwise? A. Yes, sir; very quickly.

21 Q. What effect did the execution of the order have upon the course of your steamer—what

direction did it throw her head? A. To starboard, to the westward. 261

22 Q. After this order was executed, off which bow of the Lepanto could you see the red light of the schooner Bronson? A. On the port bow.

23 Q. How many points? A. About three points, or three and one-half points.

24 Q. Could you then see any green light at first? A. No, sir; the red light only.

25 Q. What did you afterwards see? A. I saw the green light.

26 Q. Was there a red light then visible, or had it been shut out? A. She had shut it out.

27 Q. What then occurred? A. She came right down on us then and struck us on the port quarter.

28 Q. Was your helm kept hard-a-port from the time it was first put so up to the time of the collision? A. Yes, sir.

29 Q. About how long was it after you first saw the red light over your starboard bow before the collision? A. About three minutes. 262

30 Q. About how long after you saw it over your port bow was it before the collision? A. I should say a minute or a minute and a half.

Cross-examined by Mr. Smith:

1 X-Q. What course was given you when you went to the wheel at twelve o'clock? A. S. W. half S.

2 X-Q. Did you steer that course? A. Yes.

3 X-Q. Were you steering that course when you received this order to hard-a-port your helm? A. Yes, sir.

4 X-Q. What course was your steamer heading when the schooner struck you? A. About W. half N.

5 X-Q. How much had she changed? A. Five points.

6 X-Q. Did you notice the compass? A. Yes, sir; I took notice of the compass when she struck us—just afterwards.

263 7 X-Q. Was the mate standing near you when he gave the order? A. Yes, sir.

8 X-Q. How near? A. About two yards away.

9 X-Q. Was there anything said between you and the mate? A. No, sir.

10 X-Q. When you stand at the wheel of your steamer can you see the officer on the bridge all the time? A. Yes, sir.

11 X-Q. Where was he standing when he gave that order? A. He was standing close to the pole compass.

12 X-Q. On which side of the bridge? A. On the starboard side of the bridge.

13 X-Q. Did you hear him say anything about any vessel before he gave this order? A. No, sir.

14 X-Q. As soon as he gave the order you looked and saw the red light, did you? A. Yes, sir.

15 X-Q. How far was it off? A. I couldn't say.

16 X-Q. Was it not quite close? A. Yes, sir; it was pretty close.

264 17 X-Q. Was it bright? A. Very bright.

18 X-Q. Did you watch it? A. Yes, sir.

19 X-Q. Did you see when the green light opened? A. Yes, sir.

20 X-Q. Did you see them both for a moment? A. Yes, I just saw them both for a moment.

21 X-Q. And then the red light shut in? A. Yes, sir.

22 X-Q. And afterwards the green light was shut in? A. Yes, sir.

23 X-Q. And the red light came out? A. Yes, sir.

24 X-Q. Was any order given except to hard-a-port the helm? A. No, sir.

25 X-Q. When you received the order and looked at this light, did you see the vessel that it was on? Could you see the hull or the masts? A. No, sir; I didn't take that much notice.

26 X-Q. You did not know whether they could be seen or not? A. No, sir.

27 X-Q. You only looked at the red light ? A. I only saw the lights. 265

28 X-Q. Was it not a very short time from the time that you received the order to hard-a-port when the vessels were together ? A. About three minutes.

29 X-Q. You didn't have any watch to look at ? No, sir.

30 X-Q. You are just guessing at the time ? A. Guessing.

31 X-Q. Could you see the schooner to know whether she had made any change ? A. No, sir.

32 X-Q. Did you notice any other vessels ? A. No, sir.

33 X-Q. Did you hear any other reported ? A. No, sir.

34 X-Q. Did you hear this one reported by the lookout ? A. Yes, sir.

35 X-Q. Had you received the order then to hard-a-port ? A. Yes, sir.

36 X-Q. The order to hard-a-port was given before the lookout reported ? A. Just about the same time ? 266

37 X-Q. Which was first ? A. The chief officer had just given me the order when the light was reported from the lookout.

HORATIO JAMES JOSEPH WISE, a witness produced on behalf of the owners and claimants of the Steamship Lepanto, being by me first duly sworn, deposes and says as follows :

1 Q. What is your age, your occupation, and where do you reside ? A. I am thirty-six years of age ; I am a master mariner ; I live in England.

2 Q. (*By Mr. Thomas.*) How long have you been master mariner of any steamer ? A. I was in command of a steamer in China two years previous to my joining the present firm.

267 3 Q. How long have you been in command of the steamship Lepanto as her master? A. I joined the ship as master in March, 1889, and have been her master until the present time, and am her master still.

4 Q. At what time, on the night of April 22d, or the morning of April 23d, did you leave the bridge of the Lepanto? A. I couldn't say; I do not know the time; it was the night of the 22d; I should think about half-past eleven, as near as I can tell; I didn't take notice of the time that I went down off the bridge.

5 Q. After you left the bridge where were you? A. In the chart room.

6 Q. How far from the bridge was that? A. The length of the ladder, about ten feet I think the ladder is, about eight feet.

7 Q. How long has Mr. Yates been the first mate of the steamship Lepanto? A. The same length of time that I have been master of the ship. He joined the ship as chief officer at the same time that I joined her as master. 268

8 Q. What have you found with reference to his capacity and care as mate? A. A thoroughly reliable officer.

9 Q. What are the regulations of your steamer as to what is done at the change of watches? A. At the change of watches, the watch that goes on deck to relieve the one on deck is mustered on the bridge; the third officer is on the lower bridge; he receives the watch; he sees that every man is there present, and then tells them to relieve the wheel and lookout; the quarter-master goes on the bridge to relieve the wheel; he receives the course from his predecessor, and he reports to the officer that is on the bridge at the time the course that he has given up. For instance, I go on the bridge to relieve the man at the wheel; we are steering S. W. half S.; I walk to the officer that is to take my place and say S. W. half S. The man at the look-

out goes forward to relieve the man there; that man who is relieved will walk aft and report to the officer on the bridge who has relieved him. The third officer will walk forward, look at the lights and see that the man is on the lookout and will come aft to the chief officer, being in his watch, and report to him that the man on the lookout is there and that the lights are all well. Every half hour the bell is struck aft on the bridge and also forward, repeated forward on the forecastle head, and the man on the lookout looks at the lights, the masthead and sidelights, and reports, All is well. We carry a lamp trimmer, whose duty it is to look after the lamps. He keeps no lookout, or anything of that kind; he is simply to trim the lamps and general duties of the ship all through in the second officer's watch. 269

10 Q. What do you know with reference to the collision between the Lepanto and the schooner Cassie F. Bronson, which occurred on the morning of the 23d of April, 1890? A. Nothing. 270

11 Q. Did you, or not, become aware that there was a collision before the vessels had separated from each other? A. I was made aware of it by the shock.

12 Q. When so made aware of it, did you or not go on deck? A I went on deck.

13 Q. What did you then see? A. I asked how the ship's head was and how the helm was. The answer was W. half N. and the helm was hard-a-port.

14 Q. Did you look for yourself to see whether that was true or not? A. I looked at the compass myself and saw that the ship was correct—was heading as I was told—W. half N., and the helm was hard-a-port.

15 Q. After the vessels became separated from each other, what was done? A. Before I got on deck the engines had been stopped. I inquired what her course was with regard to the helm, and

271 also the ship's head. I was told she was heading W. half N. I looked and saw she was so heading. I was told that her helm was hard-a-port, and I looked and saw that it was so. Then I sent aft to find out if the ship was making water, also the amount of damage, and to get the lifeboats ready. I couldn't move the engines on account of the wreckage hanging about her stern. In the meantime I saw a boat coming to the ship from the schooner. We hailed that boat. I ordered the stepladder of the steamer to be placed over the side, and sang out to my men aft—I did not know who was there, of course—to tell the men in the boat to come up aboard the ship. They simply pulled to where the collision occurred and saw what was done. I saw the boat then myself. I ordered the ladder to be placed over the side, and the boat came alongside to look where the collision had occurred. I saw the small boat from the schooner near the place in which the steamer had been wounded, and the men in the small boat looking at 272 it. I saw them hold a lantern up. I have heard, but am not able to state personally, what occurred in reference to the inquiries made by each boat as to the name of the other. I inquired, but nobody could give me any satisfaction with respect to the name of the vessel that struck me. I afterwards steamed towards the schooner, hailed her and asked if she was all right, meaning if she was in need of assistance They answered they were all right. I heard that, and others on board the steamer heard it, but I couldn't hear their names.

16 Q. You satisfied yourself that she required no assistance before you left ? A. Yes, sir, and then I proceeded on my course to Baltimore.

17 Q. When did you arrive here in Baltimore ? A. On the night of the 25th of April, about one o'clock P. M.

18 Q. What has been going on since your arrival in reference to your steamer ? A. The regular

discharging and loading as well as we could possibly do it. The ship will be loaded to-day at two o'clock. 273

19 Q. Discharging and loading as well as you could possibly do, and repairing? A. Yes, sir. Two hours after I had entered the Custom House, Spedden & Co. started repairing the damages which had been done by the collision.

20 Q. Have they, or not, been engaged in that ever since? A. They have.

21 Q. Are those repairs completed yet? A. No, sir; not yet. Captain Sanford has been surveying the damage.

22 Q. Is it possible for you to complete the loading of your ship before those repairs are completed? A. No, sir.

23 Q. What cargo is she about to take? A. General cargo, with cattle. That means grain, tobacco, case goods, bark and several other things, and cattle on deck and between-decks.

24 Q. When, as far as you can now foresee, will she be ready to start upon her voyage? A. She won't be ready before Tuesday morning. 274

25 Q. When would she have started but for the necessity of repairing the damage occasioned by the collision? A. I believe our day of sailing was Friday morning—which was yesterday morning—or Thursday afternoon; I am not sure which; but one or the other. We were supposed to sail according to the contract as to the cattle.

Cross-examined by Mr. Smith:

1 X-Q. Has your steamer loaded here before? A. Yes, sir; three voyages previous to this one.

2 X-Q. The same character of cargo? A. Yes, sir.

3 X-Q. How long were you in port? A. About six days.

4 X-Q. What is the carrying capacity of your steamer? A. She carries about 3,000 tons alto-

275 gether, coal and cargo; that is without any cattle in the between-decks.

5 X-Q. Did you hear the men in the schooner's boat ask the name of your steamer? A. No, sir.

6 X-Q. Where were you? A. On the bridge.

7 X-Q. Did you hear any one give the name of your steamer? A. No, sir; I did not.

And inasmuch as the said exceptions do not appear upon the record of the said Circuit Court of the United States for the District of Maryland, the proctors for the claimants of said British steamship Lepanto, her engines, etc., and said cross libellant have prepared and caused this bill of exceptions upon due notice to the proctors for the said schooner Cassie F. Bronson, to be settled as the record thereof according to the form and practice of this
276 Court and the statute in such case made and provided, and have caused the same to be signed and filed, without prejudice to and without waiving any rights to a new trial of said causes, and each of them in the Circuit Court of Appeals for the Fourth Circuit, and without limiting the said rights in any way, but expressly reserving the same.

The foregoing bill of exceptions is hereby allowed.

Dated July 28th, 1891.

Hugh L. Bond. [SEAL.]
Cr. Judge.

NOTICE OF APPEAL. 277

Filed July 28, 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

MYERS BENNETT *et al.*

vs.

The British Steamship "LEPANTO," etc.

HORATIO J. J. WISE

vs.

The Schooner "CASSIE F. BRONSON," etc. 278

Sirs.—Please take notice that Horatio J. J. Wise, claimant and respondent and cross-libellant, appellant in the above entitled cross-causes, hereby appeals to the United States Circuit Court of Appeals for the Fourth Circuit from the decree of the Circuit Court of the United States for the District of Maryland, entered therein on the thirtieth day of June 1891, and from each and every part of said decree.

Dated July 23. 1881.

Yours, etc.,
JOHN H. THOMAS,
FOSTER & THOMSON,
Proctors for Appellant.

To ROBERT H. SMITH, ESQ.,
Proctor for "Bronson."

JAMES W. CHEW, Esq.,
Clerk, &c.

279 PETITION OF APPEAL CONTAINING ASSIGNMENT OF ERRORS AND ORDER OF COURT ALLOWING SAME. FILED JULY 28. 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

In Admiralty.

MYERS BENNETT (Master), and WILLIAM A. ANDERSON, Managing Owner of the Schooner "CASSIE F. BRONSON,"
Libellants and Respondents.

vs.

280 The British Steamship "LEPANTO," HORATIO J. J. WISE (Master),
Claimant and Appellant.

HORATIO J. J. WISE (Master),
Libellant and Appellant.

vs.

The Schooner "CASSIE F. BRONSON," WILLIAM A. ANDERSON (Managing Owner),
Claimant and Respondent.

To the Honorable the United States Circuit Court of Appeals for the Fourth Circuit :

The petition for appeal and assignment of errors of Horatio J. J. Wise, master of the British steamship Lepanto, her engines, &c., claimant and appellant in the cause first above mentioned and libel-

lant and appellant in the cross-libel, respectfully 281
showeth :

That on or about the fifth day of May 1890, Myers Bennett, master, and William A. Anderson, managing owner, of the schooner "Cassie F. Bronson," for themselves and the other owners of said schooner, exhibited their libel *in rem* in the District Court of the United States for the District of Maryland, against the British steamship "Lepanto," her engines, boats, tackle, apparel and furniture, for the recovery of damages to the sum of eight thousand dollars, alleged to have been sustained by them by the collision of the said schooner "Cassie F. Bronson" with the said steamship "Lepanto," on the morning of the twenty-third day of April 1890; that process thereupon issued against said steamship, her engines, etc., and that thereafter this respondent and appellant appeared and bonded the said steamship, and entered into stipulations, and filed his answer to said libel, and alleged that said collision occurred 282 solely through the carelessness and negligence of those on board the said schooner "Cassie F. Bronson."

That thereafter, and on or about the thirteenth day of May 1890, this claimant and appellant exhibited in the said District Court his cross-libel *in rem* against the said schooner "Cassie F. Bronson," her boat, tackle, apparel and furniture, for the recovery of damages sustained to said steamship "Lepanto" by reason of the collision aforesaid; and thereafter the said William A. Anderson, managing owner of the said schooner "Cassie F. Bronson," appeared and bonded said schooner, and entered into stipulations.

That therafter the said causes were consolidated and on or about the twenty-sixth day of June 1890, came on to be tried and heard before the Honorable Thomas J. Morris, judge of the said District Court, upon the allegations, and proofs adduced by

283 the respective parties upon the issues raised be the said libels and answer; that the said judge, having advised upon the said allegations and proofs upon the issues aforesaid, did thereafter make an interlocutory decree that the said libellants and respondents, Myers Bennett (Master) and William A. Anderson, managing owner, of the said schooner Cassie F. Bronson, recover in the cause instituted by them of the claimant and respondent therein their damages sustained by said collision, and referring it to a Commissioner of said Court to ascertain the amount thereof; that afterwards, and on or about the seventh day of November 1890, final decree was made and pronounced in said cause by the said District Court, by which, among other things, it was adjudged that the said libellants in said original cause recover from said claimant and respondent therein, the amount of $10,000 as and for their damages sustained by said collision, with interest, and together with their costs, and dismissing the cross-libel therein, with costs.

284 That thereafter and on or about the said seventh day of November, 1890, this claimant and appellant appealed from both of said decrees to the Circuit Court of the United States for the District of Maryland, and the said causes were duly removed into the said Circuit Court and there tried anew upon the twenty-second day of June 1891, before the Hon. Hugh L. Bond, Circuit Judge in and for the said Circuit, upon the pleadings, depositions and proofs taken in the said District Court, and such proceedings were had in the said Circuit Court that afterwards the said judge filed certain findings of fact and conclusions of law.

That afterwards and on the thirtieth day of June 1891, final decree was made and entered in said causes affirming the decree of the District Court, and adjudging that said Bennett and Anderson, libellants and respondents, recover of this claimant and appellant the sum of $10,361.62, and interest as in said decree provided.

285 That thereafter, by and with the consent of the proctors for said Bennett and Anderson, exceptions were taken by this claimant and appellant as contained in his bill of exceptions as allowed by the said Circuit Judge.

And this claimant and cross-libellant-appellant is advised that in the record and proceedings in the above entitled causes there is manifest error in this, to wit:

1. That the said Judge held that the collision occurred at 12:45 A. M.

2. That the said Judge held that objects without lights could be seen at a distance of a mile.

3. In that the said Judge held as found in the fifth finding of fact herein.

4. In that the said Judge held that the schooner "Cassie F. Bronson" had her regulation lights set, and they were burning brightly.

286 5. In that the said Judge held as found in the sixth finding of fact.

6. In that the said Judge held that a torch light was lit and held up on the schooner "Cassie F. Bronson."

7. In that the said Judge held that the course of the "Bronson" was only changed about a quarter of a point to starboard.

8. In that said Judge held that no lights or vessels were seen by any of the steamer's watch until 12:45 A. M., when the red light of the schooner "Cassie F. Bronson" was first seen by the officers on the bridge, and then by the lookout, about one and a half points on the steamer's starboard bow, about a quarter of a mile distant.

9. In that said Judge held as found in the eighth finding of fact.

10. In that the said Judge held that the collision was due solely to the negligence of those in charge

287 of the steamer, in failing to see the schooner's light sooner, when it was burning brightly and visible to them, and in their changing the course of the steamer so as to cross the course of the schooner and bring about the collision.

11. In that the said Judge held the Lepanto solely in fault.

12. In that said Judge held that those in charge of the Lepanto were in fault in not keeping a lookout and seeing the Bronson sooner.

13. In that said Judge held that those in charge of the Lepanto were in fault for putting her wheel hard-a-port, and in that way bringing about the collision.

14. In that said Judge held that the libellants, Bennett and Anderson, were entitled to a decree for their damages and all their costs, and dismissing the libel of this appellant, with costs.

288 15. In that said Judge refused to hold as requested on behalf of this appellant in the findings of fact proposed by him numbered from 1 to 9, both inclusive, and the additional findings numbered from 1 to 33, both inclusive.

16. In that said Judge refused to hold as prayed by this appellant in the conclusions of law numbered 1 and 2, and the additional conclusions of law numbered from 1 to 11, both inclusive, requested on his behalf.

17. In that said Judge refused to hold the schooner "Cassie F. Bronson" responsible for the collision.

18. In that said Judge refused to hold those on board the "Cassie F. Bronson" in fault, for not having their lights properly set and burning, for having their lights negligently obscured so as to be invisible to those on the "Lepanto," and for changing her course so as to cross the "Lepanto's" course and bring about the collision.

19. In that said Judge failed to hold the schooner "Cassie F. Bronson" solely responsible for the collision. 289

20. In that said Judge erred in finding any facts or conclusions of law.

And this claimant and appellant is advised and insists that the said decree is erroneous, inasmuch as the said decree of the said District Court should have been reversed and a decree entered in favor of this appellant for the damages resulting from the collision to the owners of the Lepanto, with costs, and inasmuch as it dismisses the libel of this claimant and appellant. And this claimant and cross-libellant, appellant hereby appeals to the United States Circuit Court of Appeals for the Fourth Circuit from the said decree of the said Circuit Court of the United States for the District of Maryland, and from each and every part thereof, and respectfully prays that such appeal be allowed, and that said decree of the said Circuit Court and the pleadings, findings of fact, conclusions of law, the bill of exceptions, evidence and proceedings in said causes, 290 may be sent to the said Circuit Court of Appeals for the Fourth Circuit without delay, and that said Circuit Court of Appeals proceed to hear the said causes anew, and that the said decree of the said Circuit Court may be reversed, and that a mandate may be issued directing that said decree be reversed, and that such other decree may be made as to the said Circuit Court of Appeals shall seem fit.

Dated July 23. 1891.

John H. Thomas,
Foster & Thomson,
Proctors for Claimant and
Cross-Libellant, Appellant.

Which appeal is allowed.

Dated July 28 1891.

Hugh L. Bond, [SEAL.]
Cr. Judge.

291 PETITION OF APPEAL, CONTAINING ASSIGNMENT OF ERRORS AND ORDER OF COURT ALLOWING SAME. FILED JULY 28. 1891.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

In Admiralty.

MYERS BENNETT (Master), and WILLIAM A. ANDERSON, Managing Owner of the Schooner "CASSIE F. BRONSON,"
Libellants and Respondents.

vs.

The British Steamship "LEPANTO," HORATIO J. J. WISE (Master),
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Claimant and Appellant.

HORATIO J. J. WISE (Master),
Libellant and Appellant.

vs.

The Schooner "CASSIE F. BRONSON," WILLIAM A. ANDERSON (Managing Owner),
Claimant and Respondent.

To the Honorable the United States Circuit Court of Appeals for the Fourth Circuit:

The petition for appeal and assignment of errors of Horatio J. J. Wise, master of the British steamship Lepanto, her engines, &c., claimant and appellant in the cause first above mentioned and libellant

and appellant in the cross-libel, respectfully 293
showeth :

That on or about the fifth day of May 1890, Myers Bennett, master, and William A. Anderson, managing owner of the schooner "Cassie F. Bronson," for themselves and the other owners of said schooner, exhibited their libel *in rem* in the District Court of the United States for the District of Maryland, against the British steamship "Lepanto," her engines, boats, tackle, apparel and furniture, for the recovery of damages to the sum of eight thousand dollars, alleged to have been sustained by them by the collision of the said schooner "Cassie F. Bronson" with the said steamship "Lepanto," on the morning of the twenty-third day of April 1890 ; that process thereupon issued against said steamship, her engines, etc., and that thereafter this respondent and appellant appeared and bonded the said steamship, and entered into stipulations, and filed his answer to
said libel, and alleged that said collision occurred 294
solely through the carelessness and negligence of those on board the said schooner "Cassie F. Bronson."

That thereafter, and on or about the thirteenth day of May 1890, this claimant and appellant exhibited in the said District Court his cross-libel *in rem* against the said schooner "Cassie F. Bronson," her boats, tackle, apparel and furniture, for the recovery of damages sustained to said steamship "Lepanto," by reason of the collision aforesaid ; and thereafter the said William A. Anderson, managing owner of the said schooner "Cassie F. Bronson," appeared and bonded said schooner, and entered into stipulations.

That thereafter the said causes were consolidated and on or about the twenty-sixth day of June 1890, came on to be tried and heard before the Honorable Thomas J. Morris, Judge of the said District Court upon the allegations and proofs adduced by

295 the respective parties upon the issues raised by the said libels and answer; that the said judge, having advised upon the said allegations and proofs upon the issues aforesaid, did thereafter make an interlocutory decree that the said libellants and respondents, Myers Bennett (Master) and William A. Anderson, managing owner of the said schooner Cassie F. Bronson, recover in the cause instituted by them of the claimant and respondent therein their damages sustained by said collision and referring it to a commissioner of said court, to ascertain the amount thereof; that afterwards and on or about the seventh day of November 1890, final decree was made and pronounced in said cause by the said District Court, by which, among other things, it was adjudged that the said libellants in said original cause recover from said claimant and respondent therein the amount of $10,000 as and for their damages sustained by said collision with interest and together with their costs, and dismissing the cross-libel therein with costs. 296

That thereafter and on or about the said seventh day of November 1890, this claimant and appellant appealed from both of said decrees to the Circuit Court of the United States for the District of Maryland, and the said causes were duly removed into the said Circuit Court and there tried anew upon the twenty-second day of June 1891, before the Hon. Hugh L. Bond, Circuit Judge in and for the said Circuit, upon the pleadings, depositions and proofs taken in the said District Court, and such proceedings were had in the said Circuit Court that afterwards the said judge filed certain findings of fact and conclusions of law.

That afterwards and on the thirtieth day of June 1891, final decree was made and entered in said causes affirming the decree of the District Court, and adjudging that said Bennett and Anderson, libellants and respondents, recover of this claimant and appellant the sum of $10,361.62, and interest as in said decree provided.

And this claimant and cross-libellant-appellant is advised that in the record and proceedings in the above entitled causes there is manifest error in this, to wit: 297

1. That the said Judge held that the collision occurred at 12:45 A. M.

2. That the said Judge held that objects without lights could be seen at a distance of a mile.

3. In that the said Judge held as found in the fifth finding of fact herein.

4. In that the said Judge held that the schooner "Cassie F. Bronson" had her regulation lights set, and they were burning brightly.

5. In that the said Judge held as found in the sixth finding of fact.

6. In that the said Judge held that a torchlight was lit and held up on the schooner "Cassie F. Bronson."

7. In that the said Judge held that the course of the "Bronson" was only changed about a quarter of a point to starboard. 298

8. In that said Judge held that no lights or vessels were seen by any of the steamer's watch until 12:45 A. M., when the red light of the schooner "Cassie F. Bronson" was first seen by the officers on the bridge, and then by the lookout, about one and a half points on the steamer's starboard bow, about a quarter of a mile distant.

9. In that said Judge held as found in the eighth finding of fact.

10. In that the said Judge held that the collision was due solely to the negligence of those in charge of the steamer, in failing to see the schooner's light sooner, when it was burning brightly and visible to them, and in their changing the course of the steamer so as to cross the course of the schooner and bring about the collision.

299 11. In that the said Judge held the Lepanto solely in fault.

12. In that said Judge held that those in charge of the Lepanto were in fault in not keeping a lookout and seeing the Bronson sooner.

13. In that said Judge held that those in charge of the Lepanto were in fault for putting her wheel hard-a-port, and in that way bringing about the collision.

14. In that said Judge held that the libellants, Bennett and Anderson, were entitled to a decree for their damages and all their costs, and dismissing the libel of this appellant, with costs.

15. In that said Judge refused to hold as requested on behalf of this appellant in the findings of fact proposed by him numbered from 1 to 9, both inclusive, and the additional findings numbered from 1 to 33, both inclusive.

300 16. In that said Judge refused to hold as prayed by this appellant in the conclusions of law numbered 1 and 2, and the additional conclusions of law numbered from 1 to 11, both inclusive, requested on his behalf.

17. In that said Judge refused to hold the schooner "Cassie F. Bronson" responsible for the collision.

18. In that said Judge refused to hold those on board the "Cassie F. Bronson" in fault for not having their lights properly set and burning, for having their lights negligently abscured so as to be invisible to those on the "Lepanto," and for changing her course so as to cross the "Lepanto's" course and bring about the collision.

19. In that said Judge failed to hold the schooner "Cassie F. Bronson" solely responsible for the collision.

20. In that said Judge erred in finding any facts or conclusions of law.

And this claimant and appellant is advised and 301
insists that the said decree is erroneous, inasmuch as the said decree of the said District Court should have been reversed and a decree entered in favor of this appellant for the damages resulting from the collision to the owners of the Lepanto with costs, and inasmuch as it dismisses the libel of this claimant and appellant. And this claimant and cross-libellant, appellant hereby appeals to the United States Circuit Court of Appeals for the Fourth Circuit from the said decree of the said Circuit Court of the United States for the District of Maryland, and from each and every part thereof, and respectfully prays that such appeal be allowed and that said decree of the said Circuit Court and the pleadings, findings of fact, conclusions of law, the bill of exceptions, evidence and proceedings in said causes may be sent to the said Circuit Court of Appeals for the Fourth Circuit without delay, and that said Circuit Court of Appeals proceed to
hear the said causes anew, and that the said de- 302
cree of the said Circuit Court may be reversed, and that a mandate may be issued to the said Circuit Court directing that said decree be reversed, and that such other decree may be made as to the said Circuit Court of Appeals shall seem fit.

Dated July 23. 1891.

JOHN H. THOMAS,
FOSTER & THOMSON,
Proctors for Claimant and
Cross-Libellant, Appellant.

Which appeal is allowed.

Dated July 28. 1891.

HUGH L. BOND, [SEAL.]
Cr. Judge.

303 And thereupon it is ORDERED by the Court, that a transcript of the record and proceedings in the cause aforesaid, together with all things thereto relating, be transmitted to the United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond, on the twenty-fifth day of August 1891, and the same is transmitted accordingly.

STIPULATION AS TO MAKING AND PRINTING RECORD.
Filed August 17. 1891.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOR THE FOURTH CIRCUIT.

304 MYERS BENNETT *et al.*,
Libellants and Appellees,
vs.
The British Steamship "LEPANTO," etc.

HORATIO J. J. WISE (Master),
Libellant and Appellant,
vs.
The Schooner "CASSIE F. BRONSON," etc.

It is hereby stipulated that the record on appeal from the Circuit Court in the above consolidated causes shall consist of the following papers:

(1) Libel, (2) Answer, (3) Cross libel, (4) Interlocutory Decree of District Court, (5) Final Decree of

District Court (6) Findings of Fact and Conclusions of Law, (7) Final Decree of Circuit Court, (8) Proposed Findings for "Lepanto," (9) Exceptions, (10) Bill of Exceptions containg testimony, (11) Notice of Appeal, (12) Petitions of Appeal and Assignment of Errors and allowance of appeal, and the Clerk is hereby authorized to certify record accordingly. 305

It is admitted that the Circuit Court refused to adopt any of the findings of fact or conclusions of law proposed on behalf of the appellant, and agreed that the Bill of Exceptions shall be considered as so stating.

It is agreed that the libel in the suit first above mentioned shall be treated as an answer to cross-libel.

It is admitted that the testimony taken before the Commissioner and his report prove that the libellants in the suit first above mentioned, and those on whose behalf they sue, sustained damages to the amount decreed in their favor by the final decree of the District Court. 306

It is further stipulated that all other papers need not be printed, but may be referred to by either side if necessary as though printed.

Dated August 3 1891.

John H. Thomas,
Foster & Thomson,
Proctors for Lepanto.

Robt. H. Smith,
Proctor for Bronson.

307 UNITED STATES OF AMERICA, } to wit:
District of Maryland. }

I, JAMES W. CHEW, Clerk of the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, do certify that the foregoing is a true transcript of the record and proceedings of the said Circuit Court in the therein entitled cause made up in accordance with the agreement of counsel duly filed in this cause.

In testimony whereof, I do hereto set my hand and affix the seal of the said Circuit Court, on this 24th. day of August A. D. 1891.

JAMES W. CHEW,
Clerk.

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Office Supreme Court U. S.
FILED.
MAY 2 1892
JAMES H. McKENNEY,
CLERK.

United States Supreme Court.

IN THE MATTER OF THE APPLICATION

of

HORATIO J. J. WISE, for a WRIT OF CERTIORARI under
the Act of Congress of March 3, 1891.

BRIEF

FOR PETITIONER UPON APPLICATION FOR THE WRIT.

JAMES THOMSON,
Of Counsel for Petitioner.

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Supreme Court of the United States.

In the Matter of the Application
of
HORATIO J. J. WISE, for a *Writ of Certiorari* under the act of March 3, 1891.

Brief for Petitioner.

The opinion of the Circuit Court of Appeals says, in respect of the schooner's lights: "*It would be unreasona-" "ble to question the truth or sincerity of these state-" "ments. It must be conceded that the red light of the" "schooner, though in its place, and burning,* WAS NOT" "VISIBLE *to these witnesses* UNTIL SHORTLY BEFORE" "THE TIME AND WITHIN HALF A MILE OF THE PLACE" "*of collision, a fact which was doubtless due to the*" "*feebleness of the breeze and the consequent slack con-*" "*dition of the sails of the schooner hanging 'way off*" "*on the port side,'* OBSCURING THE RED LIGHT."

And yet the Court holds: "IT FOLLOWS FROM THE FOREGOING CONSIDERATIONS THAT THE SCHOONER WAS NOT IN FAULT.

This is an application for a writ of *certiorari* to review a decree of the United States Circuit Court of Appeals for the Fourth Circuit, made April 19, 1892, in the consolidated cause on cross-libels filed to recover damages caused by a collision between the American Schooner "Cassie F. Bronson" and the British Steamship "Lepanto."

The collision occurred a few minutes before one o'clock, A. M., April 23, 1890, the vessel being off the Long Island coast, about twenty-five miles from Shinnecock light.

The steamer at 12:45 A. M., was on a course S. W. ½ S. She was in charge of the first officer, a duly qualified master mariner; her third officer was on the bridge to assist in the navigation, a quartermaster was at the wheel, and a competent lookout was stationed forward. The rest of the watch were on deck ready for the performance of any duty that might be required. The watch had been changed at 12 o'clock.

The schooner was on a course N. E. by E., *i. e.*, the two vessels were on intersecting courses.

The night was fine and clear but dark, the stars were shining, and the wind was from the southwest.

At about 12:45 A. M., the first and third officers of the Lepanto saw a dark object 1½ points on the starboard bow (fol. 200), which showed no lights, and which they consequently took to be a vessel going in the same general direction as the "Lepanto" (fols. 200, 206, 211, 231.)

The first and third officers examined this dark object closely, both with the glasses and with the naked eye, and continued to watch it, but no lights showed on it for some time after the dark object was sighted. They therefore kept on their course, keeping a close watch on the dark object.

While thus watching it, and about a minute after first sighting the dark object, a red light suddenly appeared on the dark object, 1½ points on the Lepanto's starboard bow, and was seen almost simultaneously by the first and third officers and the lookout (fol. 207–241). The dark object turned out to be the schooner.

When the red light was first seen the first mate *immediately* gave the order to hard-a-port. The order was promptly obeyed and the steamer went off to starboard until the red light was brought about three points on the steamer's port bow. (*fols. 201–207.*)

After the schooner's red light had thus been brought three points on the steamer's port bow, it remained visible for an appreciable time—a few seconds (red to red) and then suddenly closed out and the schooner's green light showed in its place. The vessels were then too close together for the steamer to take any further measures for avoiding the collision, and in a few seconds the schooner struck the steamer on the steamer's port side and at about right angles.

The steamer at the time of the collision had changed her course under the influence of her hard-a-ported helm from S. W. ½ W, about 4 or 4½ points, and was heading W. ½ N. (*fols. 262, 270, 271*).

The lights of the steamer were seen by those on the schooner from twenty minutes to half an hour before the collision while there was three to four miles distance between the two vessels.

The captain of the schooner also testified that when he thought the "Lepanto" was approaching too near he ordered a torch light to be shown, but that just as the second mate was "*about to show it, about to flash it,*" he saw the steamer's green light and told the second mate to never mind, and the second mate thereupon put out the light without showing it. (*fol. 174 etc.*)

I.—The practical effect of the decision of the Circuit Court of Appeals, if allowed to stand as a precedent, is to supersede the Act of Congress adopting the International Rules, and to overrule the heretofore unbroken line of decisions in the Federal Courts upholding and enforcing such Act.

The rules for preventing collisions at sea now in force are contained in Chapter 354 of the Laws of 1885, approved March 3, 1885. The rule with reference to lights requires every sailing vessel to carry:

"(B.) On the starboard side, a green light of such a "character as to be *visible on a dark night*, with a "clear atmosphere, at a distance of *at least two miles*, "and so constructed as to throw a uniform and un- "broken light over an arc of the horizon of ten points "of the compass, and so fixed as to throw the light "from right ahead to two points abaft the beam on the "starboard side.

"(C.) On the port side, a red light of such a character "as to be *visible on a dark night*, with a clear atmos- "phere, at a distance of *at least two miles*, and so con- "structed as to show an unbroken light over an arc of "the horizon of ten points of the compass, and so fixed "as to throw the light from right ahead to two points "abaft the beam on the port side.

These provisions with reference to lights now in force are the same in all respects as those adopted by Congress in 1864 (13 U. S. Statutes at Large 58), except that the order in which the requirements are laid down in the rules of 1864 was changed, and the requirement that the lights should be visible at least two miles on a dark night, with a clear atmosphere, was placed *first*.

The rules enacted in 1885, already quoted, made no change in the character of the lights, and the act of 1890 makes no change.

The law, consequently, has always, since the International Rules were first adopted, required *and still requires* the lights carried by sailing vessels to be ***visible*** on a dark night, with a clear atmosphere, at a distance of *at least two miles.*

The language of the rule is plain and explicit, and the courts have uniformly held that the rules were to be obeyed strictly, and have frowned upon any deviation from them, and have held that vessel *in fault* which permitted any obscuration of her lights.

The rule has heretofore received distinct enforcement by the Federal Courts, and *in every case* the vessel whose lights have been obscured from some physical cause on board of her, *has been held in fault.*

Until the decision of this case, the courts have held uniformly that an obscuration of the lights is negligence on the part of the vessels whose lights are so obscured, and have held such vessels in fault.

The Narragansett:

11 Fed. Rep., 918.

Blatchford, C. J. "A consideration of the proofs in this case, as well the additional proofs taken in this Court as those found in the apostles, leads me to the same conclusion arrived at by the District Court, that no fault is shown on the part of the Narragansett and that the libel must be dismissed. The District Judge found that the schooner's green and red side lights were properly set—that is, set in their proper places and properly secured, the green on the starboard side, and the red on the port side,—and that they were burning. He does not find that they were burning properly. On the contrary, he finds that the master and the lookout of the steamboat were on the watch for lights and were careful and vigilant, and were in exercise of due diligence and yet did not see any light on the schooner till close upon her; that if the lights on the schooner had been visible, those persons could have seen them, and that the lights were not capable of being seen.

He also finds that there was nothing in the condition of the atmosphere to prevent the steamer from seeing the schooner's lights. I concur in those conclusions. The statute (Rev. Stat. § 4233, rules 3 and 8), requires not only that sail vessels under way shall carry a green light on the starboard side and a red light on the port side, but that those lights shall be "of such a character as to be *visible* on a dark night with a clear atmosphere at a distance of *at least two miles*." It is very plain that the schooner's lights did not meet such requirement. They may have been burning and visible to those on the schooner's deck, but for some reason not at all connected with the vigilance or watchfulness of those on board the steamboat, the schooner's lights were not seen by them. The District Judge said that without undertaking to find affirmatively why the lights were not visible he simply found that the steamboat was in the exercise of due diligence and that the lights were not capable of being seen. * * * *

All this may explain why the schooner's lights were not seen, *though it is not necessary the steamboat should do so.* The libel alleges that the schooner was duly lighted, that her green and red lights were brightly burning and that she had all proper, sufficient and lawful lights set and burning as aforesaid. The burden is on her to show this and she has not done so.

Hyland vs. *Tugs "Buffalo" and "No. 13,"*

Decided April 29, 1892 (not reported).

Brown, D. J.: "I conclude, therefore, that neither "pilot saw the colored lights of the other until after "the ferryboat had passed, because the colored lights "were not visible through the obscuration caused by "the pilot house of the barge on the port side of 'No. "13.'

"*For this obscuration 'No. 13' was responsible, "and she must take the risk of navigating in that condition of her lights, because it was in violation of the "rule of navigation* that requires the lights to be "visible for ten points around the horizon. (*The Secaucus*, 34 Fed. Rep., 68–70.)"

The Vesper.

9 Federal Rep., p. 574.

"The rules of navigation require that these lights "shall be so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points "of the compass, and so fixed as to throw the light "from right ahead to two points abaft the beam on "either side. (Rules 3 and 8, Rev. Stat., § 4233.) If "either light is so obscured that a steamer is misled "and deceived as to the course of the sailing vessel, "and a collision ensues in consequence, it is manifestly "no fault of the steamer, and if the sailing vessel suffer "damage, *it must be set down to her own fault or misfortune, as the case may be.*"

The Alaska.

22 Fed. Rep. 548 (p. 551).

"I feel bound to hold therefore, notwithstanding the "general testimony as to the brig's red light, that there "was something about it that it was defective, either in its "position or in its screening, so as to make its range too "small, or else a dimness *that prevented its being visible* "*at the distance* required by the rules, and that for this "defect *the brig must be held chargeable, as con*"*tributing to the* collision."

The rule was applied so strictly that the burden was cast upon the sailing vessel to establish not only that her lights were lit and burning, but that they were burning properly, *i. e.*, properly placed, properly screened, proper in character, and visible and unobscured, and it was only necessary to show on behalf of the steamer that her officers and crew were competent and attentive to their duties, watching for lights but unable to see any, and no obligation rested upon the steamer to show why the lights of the other vessel were obscured.

The Narragansett.

(*Supra.*)

The Monmouthshire.

44 Fed. Rep., 697.

"The steamer's lights were seen; the bark's were not "seen. The night was clear; the horizon behind the "bark was dark. This would have aided in the easy "recognition of the bark's lights, *if they were properly* "*burning and not obscured.* In many similar cases it "has been held that when several persons on watch, "apparently attentive to their duties, can see no light "during such a considerable period, when it ought to "be seen, the defect will be ascribed to the other ves"sel, *even when the precise reason why the light was* "*not does not appear.*"

(Citing *The Narragansett*, 20 Blatch. 87; *The Royal Arch*, 22 Fed. Rep., 457; *The Alaska*, 5 Id., 548; *The Sam Weller*, 5 Ben., 293; *The Drew*, 35 Fed. Rep. 80.)

There is no difference in principle between these cases and the case at bar. The Circuit Court of Appeals holds that while the Bronson's lights may have been burning yet, for some reason not at all connected with the vigilance or watchfulness of those on the steamer, they were obscured, and were not visible to the steamer until shortly before and within half a mile of the place of collision. The only difference is that in the cases cited the vessels whose lights were obscured were held in fault, and *in the case at bar the schooner whose lights were obscured is not only held not in fault, but decreed to recover damages from the vessel which was lured into collision by such obscuration.*

Until the present case there is none in the books which varies the law as laid down in the International Rules, that the lights carried by sail vessels under way shall be visible at least two miles on a clear, dark night. There has been no attempt on the part of the courts to shorten the distance, or lessen the size of the lights, or alter their position, *or allow them to be obscured.* The test as to whether a vessel should be held in fault has hitherto been, "Did the vessel have her regulation lights set, and burning brightly, and were they unobscured?" If this question has not been answered in the affirmative, the vessel has been held in fault; and the rule has been followed quite as strictly by the Admiralty Courts of England. In the well known case of

The Tirzah,

4 Prob. Div., 33.,

it was held that "If a vessel infringes any one of the regulations, and such infringement could by any possibility have caused the collision, though it was not necessarily the actual *causa causans*, such vessel will be held to blame.

And the quite recent case, decided by the Court of Appeals, of

The "Arklow,"

9 App. Cases, 136,

has so many features similar to the present case, that we extract the following from the opinion :

Sir James Hannen, J.—" The case presented on behalf
" of the Bunin, the complaining vessel below was as
" follows : On the 30th March 1881, as she was pro-
" ceeding on a voyage from Havre to Baltimore, at two
" o'clock in the morning, the weather being dark but
" clear, and the wind from the northwest, she was
" steering a course S.W. by W. ½ W., close hauled on the
" starboard tack ; that her lights were properly burning,
" and that she was proceeding at the rate of six and a
" half knots an hour, when the red light of a ship,
" which proved to be the Arklow, was seen on the star-
" board bow ; that she, the Bunin, kept her course,
" but that the Arklow, by some unaccountable mis-
" management, as it is stated, ran into the Bunin,
" striking her about the fore-rigging on the starboard
" side with her stem. On the other hand, for the Ark-
" low it was alleged that she was steering in a course
" E. by S. ½ S. the wind being in the north, when a vessel
" was seen a point and a half on her port bow, showing
" no lights whatever ; that she was thought to be going
" the same way as the Arklow, but that after examina-
" tion through the glass, and watching her for some ap-
" preciable time, it was discovered that she was ap-
" proaching the Arklow under a starboard helm ; that
" then the Arklow's helm was put hard-a-port, and her
" after-sails taken off. In confirmation of the state-
" ment that there were no lights visible upon the Bunin,
" it is alleged and stated by several witnesses that
" a green light was seen moving upon the Bunin just
" before the collision, and in confirmation of the state-
" ment that the Bunin did not keep her course, but
" approached under a starboard helm, it is stated that
" her spanker jibed from port to starboard, it is stated,

“ indeed, just before the collision. Now in the circumstances
“ alleged on the one side and on the other, it was
“ undoubtedly the duty of the Bunin to keep her course,
“ and it was primarily the duty of the Arklow to keep
“ clear, but the Arklow alleges by way of excusing herself
“ for not having kept clear, that there was no light
“ visible on the Bunin, and that it was therefor impossible
“ to know in what direction she was sailing, and
“ therefore impossible to take measures for the purpose
“ of preventing the collision with her. The first question
“ of importance in the case is whether or not the
“ lights of the Bunin were burning *for any serviceable*
“ *purpose*. On this point the learned Judge in the court
“ below, after consulting the assessors, says, I consider
“ the point whether the Bunin carried proper lights, left
“ in so much doubt by the conflict of evidence, that I
“ am of the opinion that *the lights of the Bunin were not*
“ *fairly visible to the Arklow*. And then he goes on to deal
“ with the case upon that footing. The peculiar language
“ which is used by the learned judge, about their not
“ being *fairly visible*, may possibly have reference to
“ the evidence which has been given, that a green light
“ was seen, not in its proper place, but moving
“ on the Bunin, immediately before the collision. Their
“ Lordships agree in the view which was taken by the
“ learned Judge below upon this point, that *the lights*
“ *of the Bunin were not in such a position as to be visible*
“ *to those on board the Arklow, and that those on*
“ *board the Bunin are responsible for that departure*
“ *from the proper rules of navigation*. Their Lordships
“ arrive at this conclusion upon an examination
“ of the evidence on the one side and on the other.
“ * * * For instance, it is stated that the vessel having
“ been reported by the lookout man, and the mate
“ and another of the crew who was with him having
“ seen the vessel looming in the distance, the mate
“ fetched the captain's glasses for the purpose of examining
“ it more carefully. That is a particularity which
“ cannot be disregarded, except on the supposition that
“ the mate and the witness who confirms him are deliberately
“ stating that which they know to be false, and
“ are going much further than a mere assertion that they
“ were doing their duty. * * * Their Lordships

“ therefore come to the conclusion that the lights of the Bunin were not properly burning. But the learned Judge below, says that this question is immaterial, when their absence did not cause the collision. On this part of the case their lordships are unable to concur with the judgment of the learned Judge below. *The principle in cases of this kind, when there has been a departure from an important rule of navigation is this, that if the absence of due observance of the rule can by any possibility have contributed to the accident, then that the party in default cannot be excused.* On this point their Lordships entertain no doubt that the absence of proper lights must have occasioned an entire change in the course of events which followed upon the Bunin being visible to the Arklow. Without these lights the statement made by the witnesses on board the Arklow commends itself at once to credence, that they did not know in what direction the vessel was going, and that it took an appreciable time before a judgment could be formed upon that subject, during the whole of which time it must have remained a matter of pure chance whether it would be right to take one measure or another. *Their Lordships are therefore of the opinion that the Bunin was clearly to blame and that she was to blame in a matter which makes her responsible.*”

The decision of the Circuit Court of Appeals for the fourth circuit in the case at bar, overrules all the decisions heretofore made on the question of lights—here and abroad—and gives a new interpretation to Rules 3 and 8 of the International Rules.

The learned Judge who wrote the opinion holds and decides that the schooner's lights were obscured, that they were obscured by a physical obstruction on board the schooner; that in consequence solely of such obstruction they were not visible to the Lepanto until shortly before and within *half a mile* of the place of the collision—exactly how long and how far, the court omits to say—and adds “IT FOLLOWS FROM THE FOREGOING

"CONSIDERATIONS THAT THE SCHOONER WAS NOT IN "FAULT."

No question is raised but that the officers and crew of the "Lepanto" were competent, alert, and attentive to their duties; no suggestion is even hinted at that up to the time of observing the red light the navigation of the Lepanto was careful, vigilant and free from fault, and no attempt is made to impute fault to the "Lepanto" for not seeing the schooner's lights before, but it is admitted in just so many words that *the lights were not seen because they were obscured*, and that it would be unreasonable to question the truth or sincerity of the steamer's evidence in this respect, and that the greatest distance at which the schooner's lights could be seen was less than half a mile, and yet the learned Judge holds "upon these considerations," THAT THE SCHOONER WAS NOT IN FAULT.

It is a fair statement of the logical consequences of this decision, that a sailing vessel is only obliged to carry lights; she is not obliged to care for them with reference to their visibility, but may allow them to be interfered with by any obstruction, and if they are visible "shortly before the time and within half a mile of the place of collision," the vessel will not only be free from fault, *but will be entitled to recover damages against the other vessel, the officers of which have innocently supposed that the International Rules were obligatory.*

In other words, the International Rules have been altered in respect of lights to be carried by sailing vessels, so that such vessels must carry lights of such a character and in such manner as to be visible on a clear, dark night, *when not obstructed by the sails or other physical obstruction*, not more than half a mile.

It is to be observed that no explanation is afforded by the testimony on behalf of the schooner as to the ob-

scuration of her lights; not the slightest attempt was made in her behalf to explain or excuse it.

THE PRECEDENT ESTABLISHED BY THE DECISION IS ARBITRARY AND SUBVERSIVE.

As the decision of the Circuit Court of Appeals, unless passed upon adversely by this court upon a *writ of certiorari*, IT IS THE DECISION OF THE COURT OF LAST RESORT IN ADMIRALTY CASES AND MUST STAND AS A PRECEDENT, and it of the utmost concern to all navigators and owners of vessels sailing within the jurisdiction of the Federal Courts, aside from the personal injustice in the present case, that the matter *should be passed upon by this court, and the integrity of the International Rules as enacted by Congress sustained.*

That a review and reversal of the new departure should be made at as early day as possible is a matter of the utmost gravity and importance.

II.—The Circuit Court of Appeals is in error in holding that the Lepanto did not port her helm until the green light of the Bronson was visible, and in thus overriding and overruling the finding of the Circuit Judge made upon the application of the schooner's counsel.

The language of the opinion in respect of this matter is found at pages 20 and 21 of the petition for certiorari, and need not be quoted here. It is sufficient to say that the Court held that "the conclusion is irresistible that the schooner's green light had shown itself when the steamer's helm was put to port."

(*a.*) *The Court has evidently overlooked the effect of the finding of the Circuit Judge made upon the request of the schooner's counsel that the helm was put hard-a-port* IMMEDIATELY *when the red light of the schooner was first seen.*

At the time of the trial of this case in the Circuit Court, the Act of March 3, 1891, was not yet in force, and the right of appeal was to this Court, and it was the duty of the Circuit Judge to find the facts and conclusions of law upon which his decision was based, in accordance with the Act of 1875.

Findings of fact and conclusions of law were prepared by both parties and submitted to the Circuit Judge. The findings *prepared by the counsel for the schooner* contained the following, *which he requested the Circuit Judge to find, and which the Circuit Judge upon such request found as a fact.*

"No lights or vessels were seen by any of the steam-"er's watch until 12:45 A.M., when the *red* light of the "schooner Cassie F. Bronson was *first* seen by the officers "on the bridge and then by the lookout, *about one and "a half points on the steamer's starboard bow, about a "quarter of a mile distant;* HER HELM WAS IMMEDI-"ATELY PUT HARD-A-PORT and her head fell off to star-"board, so that *she was heading about W. ½ N. at the "time of the collision.*"

By thus requesting a finding from the Circuit Judge, it was admitted on behalf of the schooner that the steamer's helm was ported *immediately when the red light became visible.*

Such finding, made *upon request of the schooner*, was equivalent to a solemn admission by way of answer that the steamer's helm was ported *immediately* on seeing the red light, and the question was not an open one before the Circuit Court of Appeals for decision, *but was* *settled as absolutely as by a stipulation in the cause, and an adjudication thereon.*

> (b.) *The Circuit Court of Appeals also overlooked the effect of the positive, direct, uncontradicted evidence in the case, that the helm of the steamer was ported immediately upon seeing the schooner's red light.*

The evidence in the case upon the subject, was that of the officers and quartermaster of the steamer, as sustained by the evidence of the lookout and the master, and by the log of the steamer.

This evidence is set forth at length in the petition, pages 4, 5, 6, 7 and 8.

Each witness who from his situation on the steamer, was in a position to know the facts, testified positively that the steamer's helm was put hard-a-port "at once," on seeing the *red* light, that the *green* light of the schooner could not then be seen; that the effect of porting the helm was *to bring the red light from a point and a half on the starboard bow to three points on the port bow*; that the red light remained in that position an appreciable length of time—a few seconds, and that *then, and not until then, the red light shut in and the green light opened out*, and the testimony is corroborated by the testimony of the lookout, that he reported the red light, that thereupon the head of the steamer paid off to starboard, and he saw the red light two and one-half to three points on the port bow, and that the green light was not visible when he first saw the red light; and is further corroborated by the testimony of the master that *after the collision the steamer's head pointed W. one-half N. by compass.*

There is not a word of evidence to contradict or question these statements; they constitute the only evidence on the subject in the case, and they are made by the same witnesses in respect of whose statements with reference to the invisibility of the schooner's lights, the learned Judge says, it would be unreasonable to question their truth or sincerity.

The court has overlooked the effect of this testimony taken in connection with the statement of the second mate of the schooner that he helped to put the wheel of the schooner *hard a-port* when the vessels were still half a mile apart (fol. 163).

The learned Judge attempts to dispose of this evidence in his opinion by the statement that the Lepanto's testimony cannot overcome a stubborn physical fact, *i. e.*, that the collision would have been impossible if the helm had been ported when the red light was first seen, as he says "shortly before the time, and within half a mile of the place of collision."

But the learned Judge overcomes very easily in the diagram by which he illustrates the collision another physical fact, and that is, that the steamer on putting her helm hard-a-port would *not turn round upon her axis, as though centred on a pivot*, but must necessarily describe a curve to starboard, *i. e.*, she would forge ahead while going to starboard under the influence of the hard-a-port helm. This subject however, will be found treated under the next point.

The difficulty with the learned Judge's suggestion that there is a stubborn physical fact to overcome is that such difficulty is only brought into the case by ignoring the paramount fact which is *demonstrated* by *admitted* facts, viz: *that the schooner varied from her course* so as to run into the steamer.

The question as to the porting of the helm is of importance in view of the fact that there are cases pending before the various Circuit Courts of Appeal, where decisions were made prior to the operation of the Act of

March 3, 1891, by the Circuit Courts, in which findings were made under the Act of 1875, and there has been no decision as to the effect upon such appeals of the findings so made.

III.—The schooner changed her course at or previous the time that the Lepanto ported her helm on seeing the schooner's red light.

This is demonstrable, and it is also demonstrable that the learned Judge who prepared the opinion of the Circuit Court of Appeals fell into a mistake in not finding such change of course on the part of the schooner.

The schooner's company *say* they did not change their course until just before the collision; but Holt, the second officer, who helped put the wheel over says it was done when the steamer was half a mile away. They say they ported, but this is disproved by the course the vessel headed at the time of the collision—N. N. W., or N. W. by N., testified to by the captain of the schooner (*fol. 179*).

The schooner changed her course to port, as soon as she saw the steamer's red light.

To *demonstrate* this, it is only necessary to accept conceded facts—as follows:

1. When the steamer first sighted the schooner's red light she was heading S. W. ½ S. (See diagram.)

2. At that time the schooner was heading W. ½ N. (See diagram.)

3. Consequently at that time they were 1½ points each off the bow of the other.

(See red light dotted line on diagram.)

4. The steamer ported her helm immediately, and curved to starboard on her ported helm.

(See diagram.)

5. At the time of collision the steamer had reached a course of W. ½ N.

(See diagram.)

6. At the time of collision the schooner had reached a course of N. N. W. or N. W. by N.

7. The schooner struck the steamer upon her port side at right angles.

8. At time of collision the helm of the steamer was hard a-port.

Under all such conditions, which are either admitted or proven without contradiction, how could the schooner have struck the steamer without the former had changed her course?

The diagram attached to opinion (p. 19) is an impossible one, independently of having to discredit a finding of the Circuit Judge made *at the request of the schooner's counsel*, in order to give it any plausibility.

The angle of collision in that diagram is in absolute violation of all the evidence.

At least it was a right angle. If it were put at right angles upon the diagram, the plan of collision of the learned Judge would have been more impossible than ever.

The diagram of the learned Judge shows the steamer turning almost upon a pivot, and even then only reaching a sharp angle, when the evidence shows clearly a right angle.

A comparison of the two diagrams will dispose summarily of the subject.

The fallacy of the "stubborn physical fact" theory is established by a comparison of all the evidence in the case both on behalf of the steamer and the schooner upon the following points: (a) The courses of the two vessels on sighting; (b) the angle at which the collision occurred; (c) the condition of the steamer's helm; (d) the direction of the steamer's head at the time of and just after the collision; (e) the direction of the schooner's head after the collision.

(a.) *The courses of the two vessels on sighting.*

These courses are admitted to have been for the steamer S. W. ½ S. and for the schooner N. E. by E.

(b.) *The angle at which the collision occurred.*

This is shown by the testimony of the schooner's witnesses.

"Q. About what angle did they strike? A. About
"seventy degrees I should call it from the head.
"Q. Where is the angle of seventy degrees? A.
From right ahead and round to where the schooner came.
"Q. What was the angle between your *port* bow and
"the steamer's *port* side? A. When the collision hap-
"pened?
"Q. When the collision happened. Was that angle
"larger or smaller than the angle formed by your star-
"board side and the steamer's port? A. *It was larger.*
"Q. *The angle on your starboard side was a little*
"*less than the other?* A. Yes, sir.
"Q. A little less than a right angle? A. Yes, sir."

(*Holt*, fol. 153).

"Q. Which side of your vessel was most injured?
"A. Both sides alike. * * *
"Q. About what angle did the bowsprit of your
"schooner make with the side of the steamer at the
"moment as well as you can judge? A. Nearly straight
"across the steamboat as near as I can judge.
"Q. Nearly at right angles do you mean? A. At
"right angles." (Browning, fol. 104).

"Q. How did the vessels come together; at about
"what angle. A. The steamer came into us nearly
"straight across our bow." (Bennett, fol. 178.)

The schooner struck the steamer on the *port* side abaft the bridge, and afterwards on the *port* quarter.

(c.) *The condition of the steamer's helm.*

As has already been shown, the steamer's helm was put hard a-port immediately on seeing the schooner's red light, and her head fell off to starboard.

No change was afterwards made in the steamer's helm until after the collision; it was kept hard-a-port.

"Q What change if any did you make in your helm
"after you once put it hard-a-port? A. None, what-
"ever. Kept it hard-a-port." (Yates, fol. 201.)

"The helm of the Lepanto was hard-a-port all the time." (Wadsworth, fol. 201.)

"The helm was kept hard-a-port."

(Steamers log, fol. 207.)

"Q. Was your helm kept hard-a-port from the time
"it was first put so up to the time of the collision? A.
"Yes." (Kilby, fol. 261.)

"And Dee, the schooner's lookout says that when the
"the vessels struck the steamer's wheel was to port.
"Q. How was her stern swinging—away from you or
"towards you? A. Towards our bow. Her stern was
"swinging towards us, and her bow was going off from
"us." (fol. 138.)

d. *The direction of the steamers head at the time of and just after the collision.*

"Her head fell off to starboard, so that she was heading about W. ½ N. at the time of the collision."

This is the finding of fact made on the subject by the Circuit Judge at the request of counsel for the Bronson.

(fol. 38.)

"Q. What course was your steamer heading when "the steamer struck you? A. About W. ½ N. * * *
"Q. Did you notice the compass? A. Yes, sir; I "took notice of the compass when she struck us—just "afterwards." (Kilby, fol. 262.)

"I looked at the compass myself and saw that the "ship was correct—was heading as I was told W. ½ N. "and the helm was hard-a-port." (Wise, fol. 270.)

The course of the steamer on sighting was S. W. ½ S. and the schooner's red light when sighted was 1½ points on the steamer's starboard bow.

"I suddenly saw a red light appear. * * *
"Q. Bearing about how from your steamer? A. "About a point and a half on the starboard bow. * * "I brought it on my port bow about three points."

(Yates, fol. 201.)

"I saw a red light suddenly appear * * * about "1½ points off our starboard bow. The mate told the "helmsman to port * * to hard-a-port. It brought "the red light about three points off the port bow of "the Lepanto." (Wadsworth, fol. 232-233.)

"I saw a red light about a point and a half on the "starboard bow
"Q. What did you do in consequence of the order to

"put your helm hard-a-port? A. Put it hard-a-port *
" * *

"Q. After this order was executed, off which bow of
"the Lepanto could you see the red light? A. On the
"port bow.

"Q. How many points? A. About three points or
"three and a half points" (fols. 260, 261).

e. *The direction of the schooner's head after the collision.*

The captain of the schooner says:

"At the time of the collision (the schooner's head
"was) about N. N. W., I should judge, or N. W. by
"N." (fol. 179).

Holt, the second officer, says:

"When the steamer struck our vessel, it turned right
"around in the same direction in which the steamer was
"going."

It is perfectly clear from the evidence that the course of the steamer and schooner on sighting were respectively S. W. ½ S. and N. E. by E.; that the vessels collided at a right angle, or less than a right angle, the angle being appreciably smaller between the port side of the steamer and the port side of the schooner than on the other side; that the schooner struck the steamer abaft the bridge and on the port quarter; that the steamer at the time of the collision headed W. ½ N., and that the schooner's head was turned in practically the same direction by the collision.

The collision is practically illustrated by the accompanying diagram. In no other way can the evidence be reconciled, and it is clear beyond the possibility of doubt that the schooner changed her course.

The learned Judge who wrote the opinion in the Circuit Court of Appeals, attempts to explain the collision without a change of course on the part of the schooner, by the diagram attached to the opinion, but to do so he has to assume that the steamer did not port her helm until the green light of the schooner was visible, and instead of having one physical fact to overcome, he has two stern physical facts to meet; first, the steamer on putting her helm hard-a-port could by no possibility turn on a pivot but must make a circle to starboard forging ahead at the same time; and, second, the schooner in addition to her own dead weight had a cargo of 1,800 tons of coal on board, and yet the collision turned her head in about the same direction as the steamer; this was manifestly impossible if the schooner had continued to head N. E. by E.; the angle would then have been very considerably smaller between the steamer's port side and the schooner's port side than the angle on the opposite side, and the collision would have turned the schooner's head to the southward.

If the lights of the schooner were properly placed and properly screened, it would have been impossible for the steamer to see the schooner's green light, until the steamer got beyond the point of intersection, and if she had then put her helm hard-a-port, the schooner being less than half a mile distant, and the schooner had held her course, the schooner never could have struck the steamer on the port side abaft the bridge, and on the port quarter, but the steamer would have either struck the schooner on the starboard side or gone astern of her. The steamer by no possibility could have put her helm hard-a-port without describing a circle.

Upon the evidence in this case the diagram annexed hereto, is the only explanation of the collision which meets all the tests.

There is one test in the case as to the truth of the statements of the parties which is lacking. THE LOG BOOK OF THE SCHOONER HAS NEVER BEEN PRODUCED. It would have afforded a means of testing the truth of the statements of the schooner's witnesses, and their claims as to the manner of the collision, but it has never been shown. *The log of the steamer was produced and submitted to inspection, but the log of the schooner has never been seen.*

It can have been withheld for but one reason. Not only is there nothing in it to assist the schooner out, but its contents would militate against their claims.

In such circumstances, added to the fact of the infringement of the International Rules by the obscuration of the lights, every intendment is against the schooner, and in favor of the steamer.

IV.—The schooner failed, on the approach of the steamer, to show a lighted torch on that part of the schooner to which the steamer was approaching.

This is the requirement of section 4234 of the U. S. Revised Statutes.

The schooner was in a position to show a torch, and did make preparations to show the torch, but did not show it.

The decision of the Circuit Court of Appeals holds that section 2 of the International Rules repeals all laws and parts of laws inconsistent with the rules, and that the Act of 1885, containing the rules, omits section 4234 of the U. S. Revised Statutes.

It is difficult to see how the omission of section 4234 of the Revised Statutes from the Act of 1885 affects the question. Section 4234 never was a part of the International Rules, but was a regulation obligatory only upon vessels of the United States, and it was unnecessary, when re-enacting the International Rules, to re-enact the statutory regulation.

The repeal contained in the Act of 1885 would appear not to affect the case. The Circuit Court of Appeals evidently considers the section 4234 as inconsistent with the provision in the International Rules, that the lights therein mentioned, and no others, shall be carried between sunset and sunrise.

But the word "*carried*," as used in Article 2, evidently means to *carry as a fixed light*, and the regulation with respect to torchlights is only operative when the vessel is approaching a steamer at night.

This question came up in the English Admiralty Court in the case of

The Merchant Prince,

10 Prob. Div., 139,

the opinion being written by Sir James Hannen, and it was held that the International Rules do not forbid the showing of a torchlight.

"The first question which I have to determine is one "of law, namely, as to the construction of the regulations for preventing collisions at sea. It has been "contended on behalf of the *Merchant Prince* that the "exhibition of a flare-up light is forbidden, except in "two cases—one where a vessel is being overtaken, in "which case it is shown astern, and the other in the "case of fishing vessels. With regard to Art. 11," it is to be observed that it says that "A ship which is being "overtaken by another shall show from her stern to "such last mentioned ship a white light, or a flare-up "light. That does not of itself forbid the use of a "flare-up light in other cases. It is also to be observed "that the word which is there used is 'show.' Now "the rule which is relied on as proving that the flare "light is not to be shown unless under the circumstances above mentioned, is Art. 2, which says, 'The "lights mentioned in the following articles, numbered "3, 4, 5, 6, 7, 8, 9, 10 and 11, and no others, shall be "carried in all weathers from sunset to sunrise.' *I am "of opinion that this article does not mean that no "other lights shall be shown on any occasion, but that "no other lights shall be carried as fixed lights than "those mentioned.*"

Besides, without reference to the statute, the exhibition of such a light is an obligation of reasonable prudence in navigation, even where a sailing vessel has her regulation lights set and properly burning, if a steamer is approaching in such a direction as to involve risk of collision. And in the present case, where the schooner's lights were not properly visible but were obscured, it is impossible to say that the collision might not have been averted if the schooner had shown a torchlight.

It was the duty of the schooner, independently of the obligations resting on the steamer, to take all such measures as might be necessary to avoid collision, and the exhibition of the torchlight might have served to warn the steamer, and thus have averted the collision. At any rate the schooner would have performed all the duties imposed upon her and the fault would have rested with the steamer.

In *The Oregon*,
45 Fed. Rep., 62.

Judge Deady uses this language: "Nothing, it seems "to me, would sooner or more certainly apprise a mis- "guided steamer on a dark night of the existence of a "sail vessel in her apparent path and the danger of collision if persevered in, than a flare up or torchlight "suddenly exhibited over her side. Had the C. M. "been provided with such a light, and had it been exhibited on the first approach of the Oregon, or even "when she was within a quarter of a mile of the C. M., "it is probable that the collision would not have occurred. *At least the C. M. would have done what "she ought and could to prevent it, and the Oregon "would have been left without excuse.*"

The rule that it is the duty of the sailing vessel to exhibit a torchlight or give some other timely indication of her presence was also applied in the case of

The Oder.

13 Fed. Rep. 272.

where the barque was held in fault for not exhibiting a torchlight to call the attention of the schooner.

The Federal Courts have held sailing vessels in fault for a failure to exhibit a torchlight in accordance with § 4234 in the cases of *The I. C. Harris*, 29 Fed. Rep., 926; *The Algiers*, 28 Fed. Rep., 242; and many other cases.

The measures taken by the "Bronson" with reference to the torchlight show that her people were aware that from some cause her lights were not visible to the schooner, and prove that the obscuration of the lights was not only negligent and careless, but was in the highest degree wilful and culpable.

It is of importance that this court shall consider and pass upon the questions involved in this case with reference to the torchlight so that the law on the subject shall be settled, and its application defined, and so that those in charge of and navigating vessels within the jurisdiction of the Federal Courts may know whether there is any obligation either of law or reasonable prudence to exhibit a torchlight when a sailing vessel is being approached by a steamer in the night time.

V. The steamer was without fault for the collision.

The only fault claimed against the steamer by the learned Judge who wrote the opinion of the Circuit Court of Appeals is that she did not port her helm until the green light of the schooner was visible.

But to attain this result the learned Judge is obliged to disregard all the evidence in the case both on behalf of the steamer and the schooner; to disregard the finding of the Circuit Judge made upon the written request of the schooner's counsel, that the steamer's helm was ported *at once* on seeing the red light; to disregard the angle at which the collision occurred and to force a collision on his diagram at an angle which is not only unsupported by any evidence but was impossible.

See diagram, p. 19 of petition.
Also diagram, in this brief.

He is further obliged to disregard the course of the steamer at the time of collision, and the course of the schooner at the time of the collision, and to disregard the fact testified to by the schooner's witnesses, that *the schooner's head was turned by the collision in the same direction as the steamer's head.*

The most casual inspection of the learned Judge's diagram will show the absolute impossibility of the collision as described there, turning the schooner's head around in the same direction as the steamer, *i. e.*, W. ½ N., and when the fact that the schooner, in addition to her own weight, carried 1,800 tons of coal, the absolute impossibility of the diagram is apparent.

There was no fault on the part of the steamer. She acted on the indications held out to her by the schooner, under the obscuration of the schooner's lights, as she had a right to do, and she ported at once when the red light was visible. The fault for the collision rests with the schooner and not at all with the steamer.

VI.—The questions involved in this case are eminently of gravity and importance.

It is of the utmost gravity and importance to all navigators and ship owners to have prompt determination by this Court as to whether the statute and the decisions of the Federal Courts, as heretofore prevailing, in respect of the exhibition of lights by vessels at night, shall be held to be so modified as to allow vessels whose lights have been obscured to be held without fault, and to recover damages against other vessels who have been lured into collision by such obscuration.

It is of the utmost gravity and importance to all navigators and ship owners that this Court shall pass upon and declare whether or not Rev. Statutes, § 4234, has been repealed by the Act of March 3, 1885, and whether or not there is any obligation resting upon a sailing vessel under said section, or as an obligation of reasonable prudence, to exhibit a torch-light to an approaching steamer.

It is also of importance, not only to the petitioner, but to other litigants, that this Court shall pass upon the question as to whether *a finding of fact made by a Circuit Judge, upon the request in writing of the prevailing party*, and which fact is sustained by all the evidence, and in respect of which no evidence to the contrary is adduced, should be negatived by the Circuit Court of Appeals in the interest of such party, in order to relieve such party from the effects of such evidence, request and finding, when the same would, upon proper consideration, have been fatal to the recovery.

VII.—The application of the petitioner should be granted, and the writ of certiorari to review the decree of the Circuit Court of Appeals for the Fourth Circuit should issue as prayed.

James Thomson,
Of Counsel for Petitioner.

Office Supreme Court U. S.
FILED.
MAY 5 1892.
JAMES H. McKENNEY.
CLERK.

United States Supreme Court.

IN THE MATTER OF THE APPLICATION of HORATIO J. J. WISE, for a WRIT OF CERTIORARI under the Act of Congress of March 3, 1891.

BRIEF

For Myers Bennett, master, and William A. Anderson, managing owner, of the schooner "CASSIE F. BRONSON," in opposition to the granting of the writ.

Robert H. Smith,

Proctor for the Bronson.

United States Supreme Court.

IN THE MATTER OF THE APPLICATION of HORATIO J. J. WISE,
for a WRIT OF CERTIORARI.

BRIEF FOR THE MASTER AND OWNER OF THE SCHR. "CASSIE F. BRONSON."

On May 5, 1890, Myers Bennett, master of the schooner Cassie F. Bronson, and William A. Anderson, her managing owner, filed a libel in the U. S. District Court for Maryland, against the British steamship Lepanto, to recover damages caused by a collision between said vessels. On November 7th, 1890, a decree was passed by said Court in favor of the master and managing owner of the Bronson, awarding them $10,000 damages, and dismissing a cross libel which had been filed by the master of the Lepanto, against the Bronson. An appeal was taken by the claimant of the Lepanto to the Circuit Court, and on June 30, 1891 the decree of the District Court was affirmed, the amount awarded the Bronson being $10,361.62. From this decree an appeal was taken by the claimant of the Lepanto, to the Circuit Court of Appeals for the fourth circuit. This appeal was heard by Chief Justice Fuller and Judge Hughes, and in April last, an opinion was filed by Judge Hughes, in which Chief Justice Fuller concurred, affirming the decree of the Circuit Court.

A petition is now filed in this Court by Horatio J. J. Wise, master of the Lepanto, asking that a writ of *certiorari* issue, requiring the United States Circuit Court of

Appeals for the Fourth Circuit to certify said cause to this Court, for its review and determination.

On behalf of the master and owner of the Bronson, it is submitted that this is not a case in which this power can be properly invoked. By section six of the Act of March 3, 1891, it is provided that the decrees of the Circuit Court of Appeals shall be final in admiralty cases.

This Court has said in the recent case of "Ex parte, Lau Ow Bew, Petitioner," 141 U. S. 583, a case in which a writ of certiorari was asked: "It is evident that it is solely questions of gravity and importance that the Circuit Court of Appeals should certify to us for instruction; and that is only when such questions are involved that the power of this Court to require a case in which the judgment and decree of the Court of Appeals is made final, to be certified, can be properly invoked," and "this branch of our jurisdiction should be exercised sparingly."

And in passing upon the case after it had been certified to this Court, Chief Justice Fuller says, in the opinion filed March 14, 1892, "and as certiorari will only be issued where questions of gravity and importance are involved, or in the interest of uniformity of decision, the object of the Act is attained."

In an attempt to bring this case within the language above stated, the petitioner endeavors to show that the effect of the decision of the Circuit Court of Appeals will be to disturb the law governing the lights which sailing vessels shall carry. No such result can possibly follow this decision. The lights which vessels, steam as well as sail, shall carry, are fixed by statute. (Rev. Stat. U. S. sec. 4233.) This decision does not vary the law as it has always been interpreted.

The Circuit Court of Appeals says in its opinion: "The evidence of all the crew of the schooner in this case is so positive, clear and consistent to the effect that her lights were in their proper places and burning brightly for hours before, and at the time of the collision, that it would be unreasonable to entertain doubts of the fact."

"In every case of collision between ships, in which the testimony of one vessel is as unanimous and positive as it is in this, if it nevertheless be in fact false, there is sure to be some physical circumstance, condition of things, or occurrence developed in the evidence to refute and discredit the false testimony. This sort of refutation is wholly wanting in the present instance, and it must therefore be repeated that it would be unreasonable to doubt the fact that the regulation lights of the schooner were in their proper places and burning brightly before the collision."

The Court does suggest as a possible reason for the crew of the Lepanto not having seen the schooner's red light until shortly before the collision, that the feebleness of the breeze caused the sails to hang in a slack condition, obscuring the light. The proof showed (Record, page 96) that the side lights were "fixed in the forward rigging, with long screens in board, set off on the forward end so as to be on a straight line with the keel of the vessel." There are no sails forward of that point to obscure the lights, except the jibs, and whether they were hanging slack or were full, they would not have obscured a light hanging out in the forward rigging, especially from a vessel a point and a-half on the port bow.

Besides, if it was a fact that the red light was obscured until shortly before the collision, it did not in any way contribute to the collision.

The Circuit Court of Appeals says: "the collision could not have occurred if the helm had not been put down after the schooner's course had been crossed; and the steamer was in fault in putting it hard to port after that crossing, and doubtless after the schooner's green light was shown."

It is not, however, the purpose of this brief to sustain the Court of Appeals in its conclusions, as the question is simply upon the granting of the writ of certiorari. Even though the Court was wrong in its conclusions, a thing very improbable when the fact that the District, Circuit and Circuit Courts of Appeals, found the Lepanto solely in fault, is considered, yet that of itself is no sufficient reason for granting the writ.

The petitioner also complains that the conclusion of the Court of Appeals with reference to a torch light not being required is a ground for granting the writ. If uniformity of decisions is the desire of the petitioner, that has been attained already, so far as the Courts of this country are concerned.

The only cases in which our Courts have passed upon the question are the case of "The Algiers," 38 Fed. Rep. 526, Judge Benedict holding that since the Act of March 3, 1885, it is a fault for a sailing vessel to exhibit a torch, except when being overtaken; the case of the "State of California," reported in the advance sheets of the Fed. Rep. Vol. 49, No. 2, page 172, the Circuit Court of Appeals (Deady, Hanford and Hawley, Judges) for the ninth circuit, holding that section 4234, Rev. Stat., requiring a sail vessel to show a torch on the quarter on which a steam vessel is approaching her, is superseded by art. 11 of the International Rules, so far as the high seas and the coast waters are concerned; and the present case holding in effect the same thing. It is difficult to see how any Court could reach any different conclusion. It will be time enough to have this Court pass upon this question when a different view has been taken by any of our Courts. Besides in this case a torch light was shown but not seen by the Lepanto.

There is no question of gravity and importance involved in this case, and the writ of *certiorari* ought not to be granted.

ROBT. H. SMITH,

Proctor for the Bronson.

Transcripts
of
Records

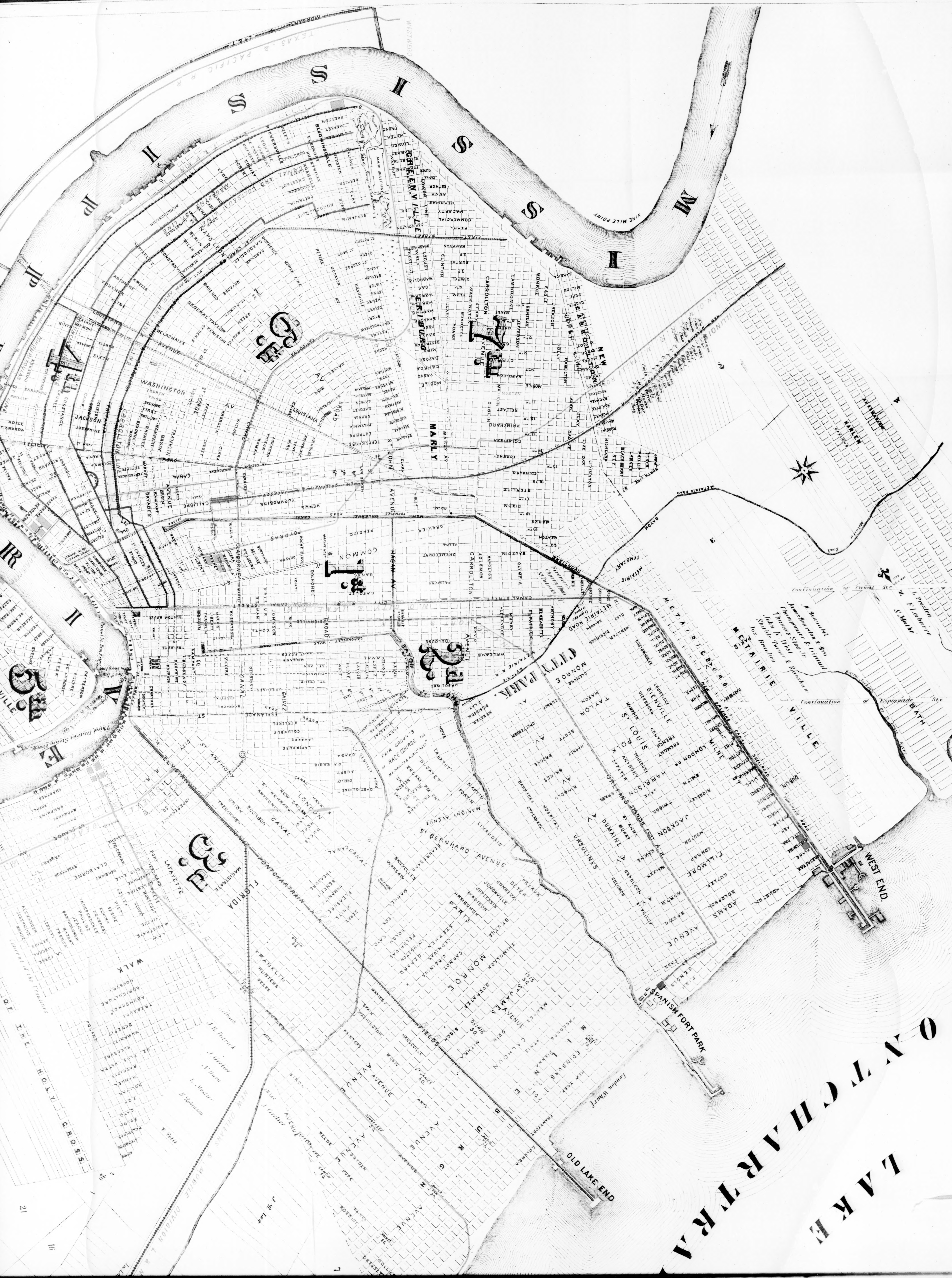
~~8~~ 850

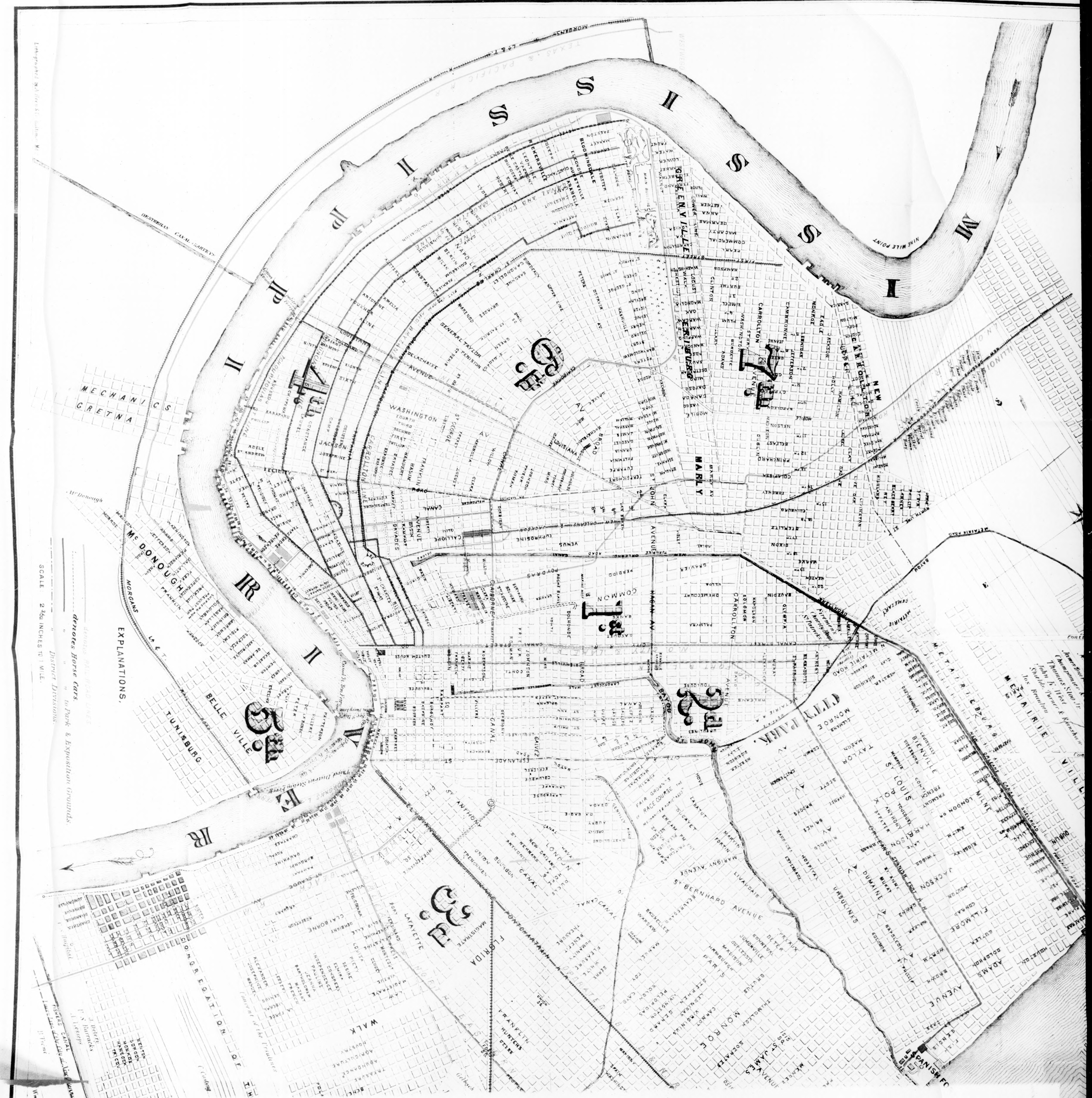
Supreme Court U. States

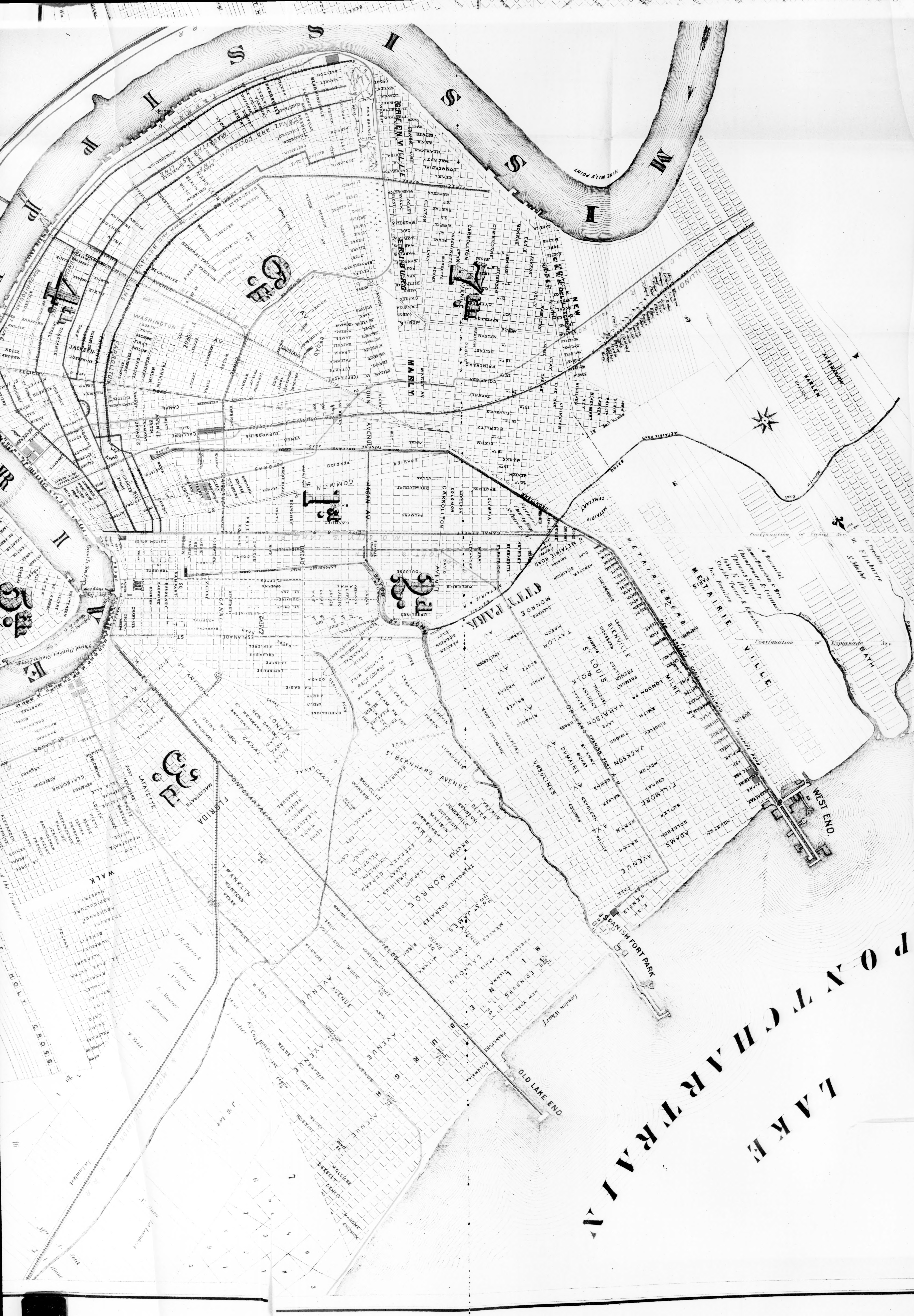
145 U. S.

653- END

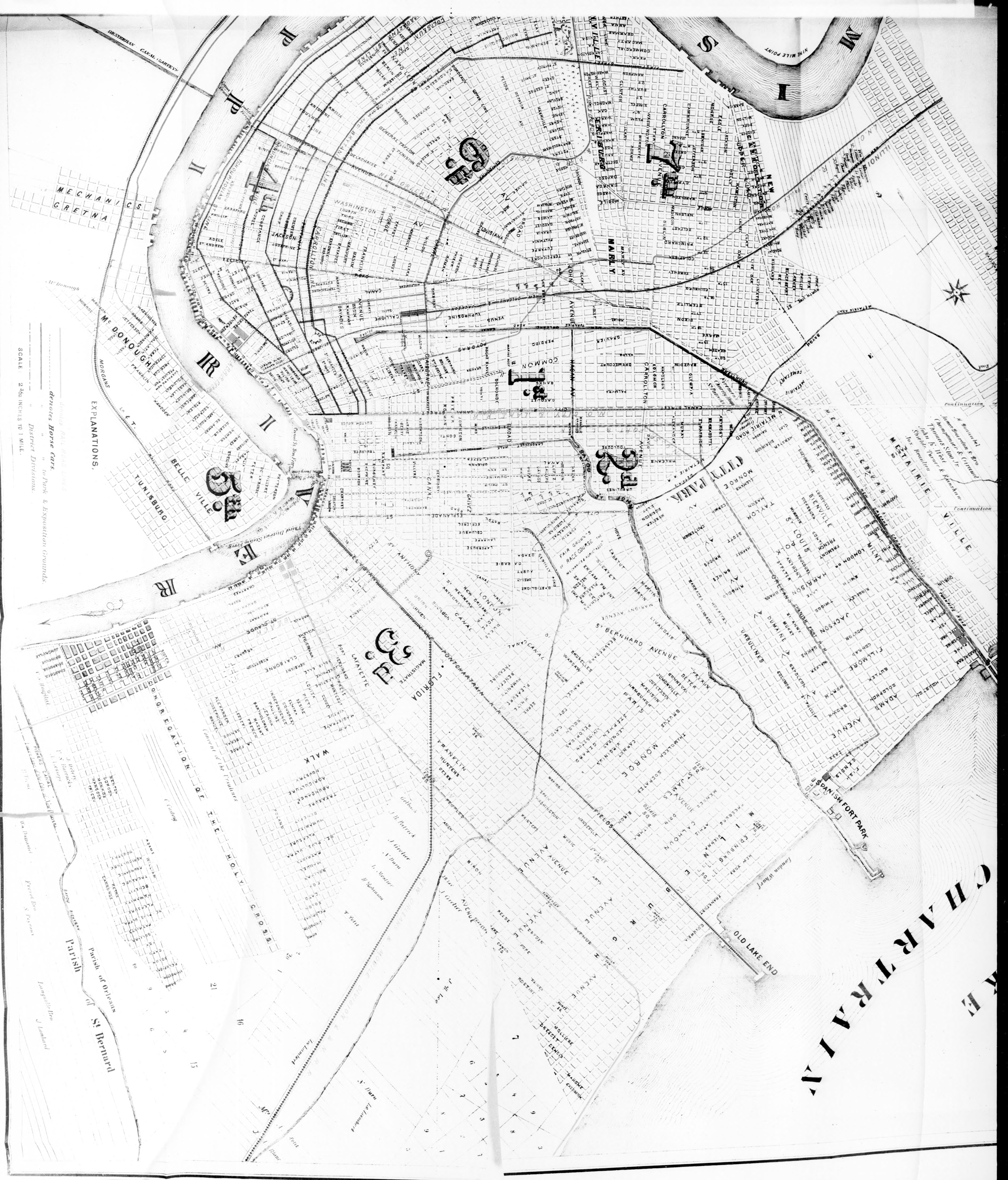
SOARDS' OFFICIAL & R.R. MAP OF NEW ORLEANS.




EXPLANATIONS,
denotes RAIL ROAD LINES
denotes Horse Cars.
" " to Park & Exposition Grounds.
" District Divisions.
SCALE: 2 3/32 INCHES TO 1 MILE.
MISSISSIPPI RIVER
1st
2d
3d
4th
5th
6th
7th
GRETNA
MECHANICS
McDONOUGH
BELLE VILLE
TUNISBURG
MORGANS
GREENVILLE
CARROLLTON
NEW CARROLLTON
MARLY
CITY PARK
METAIRIE
METAIRIE RIDGE
NINE MILE POINT
TEXAS & PACIFIC R.R.
WASHINGTON AV
NAPOLEON
LOUISIANA AV
CANAL
ESPLANADE
ST CLAUDE
FLORIDA
PONTCHARTRAIN R.R.
CONGREGATION OF THE
ST BERNHARD AVENUE
U.S. Barracks
FISHERS CANAL
Fair Grounds & Race Course
ST JAMES AVENUE
SPANISH FORT



SOARDS' OFFICIAL & R.R. MAP OF NEW ORLEANS.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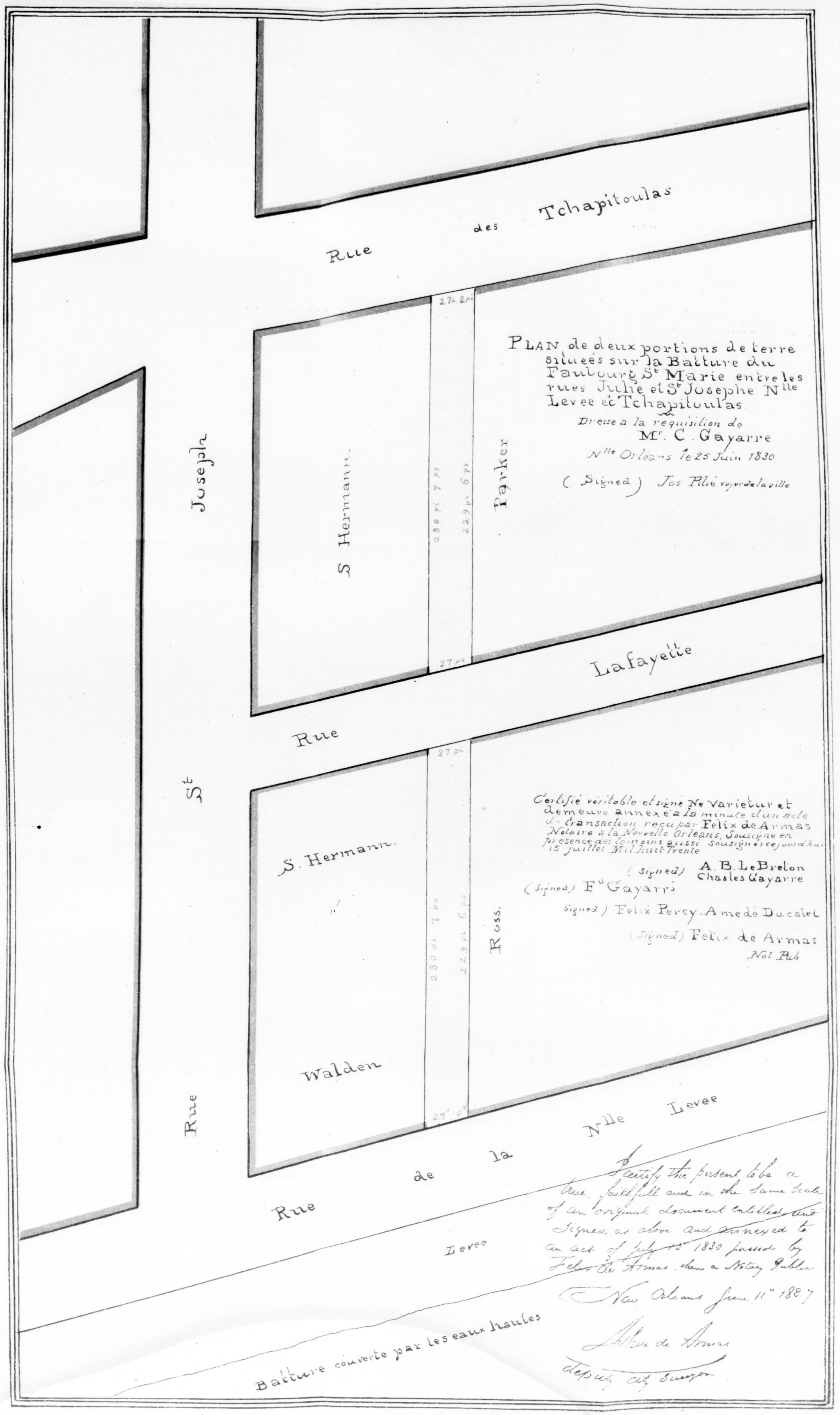
McDONOUGH
BELLE VILLE
TUNISBURG
METAIRIE VILLE
CITY PARK
SPANISH FORT PARK
OLD LAKE END
NINE MILE POINT
CONGREGATION OF THE HOLY CROSS
Convent of the Ursulines
FAIR GROUNDS
RACE COURSE
CANAL
ESPLANADE
ST CLAUDE
PONTCHARTRAIN R.R.
METAIRIE ROAD
Continuation
Parish of Orleans
Parish of St. Bernard

No. 391.
New Orleans Water Works Co
v.
Maginnis Oil & Soap Works. } p. 79.



PLAN de deux portions de terre
situées sur la Batture du
Faubourg St Marie entre les
rues Julie et St Josephe Nlle
Levee et Tchapitoulas.

Dresse a la requisition de
Mr. C. Gayarre
Nlle Orléans le 25 Juin 1830

(Signed) Jos Pilié voyer de la ville

Certifié véritable et signé Ne Varietur et
demeure annexé a la minute d'un acte
de transaction reçu par Felix de Armas
Notaire a la Nouvelle Orleans, Sousigné en
presence des temoins aussi Sousignés cejourd'hui
15 juillet Mil huit Trente

(Signed) A. B. LeBreton
Charles Gayarre
(Signed) Ed Gayarré
Signed) Felix Percy. Amédé Ducatel
(Signed) Felix de Armas
Not Pub

I certify the present to be a
true, faithfull and in the Same Scale
of an original document entitled and
Signed as above and annexed to
an act of July 15 1830 passed by
Felix De Armas then a Notary Public

New Orleans June 11th 1887

Alfred de Armas
deputy city Surveyor

Reference.

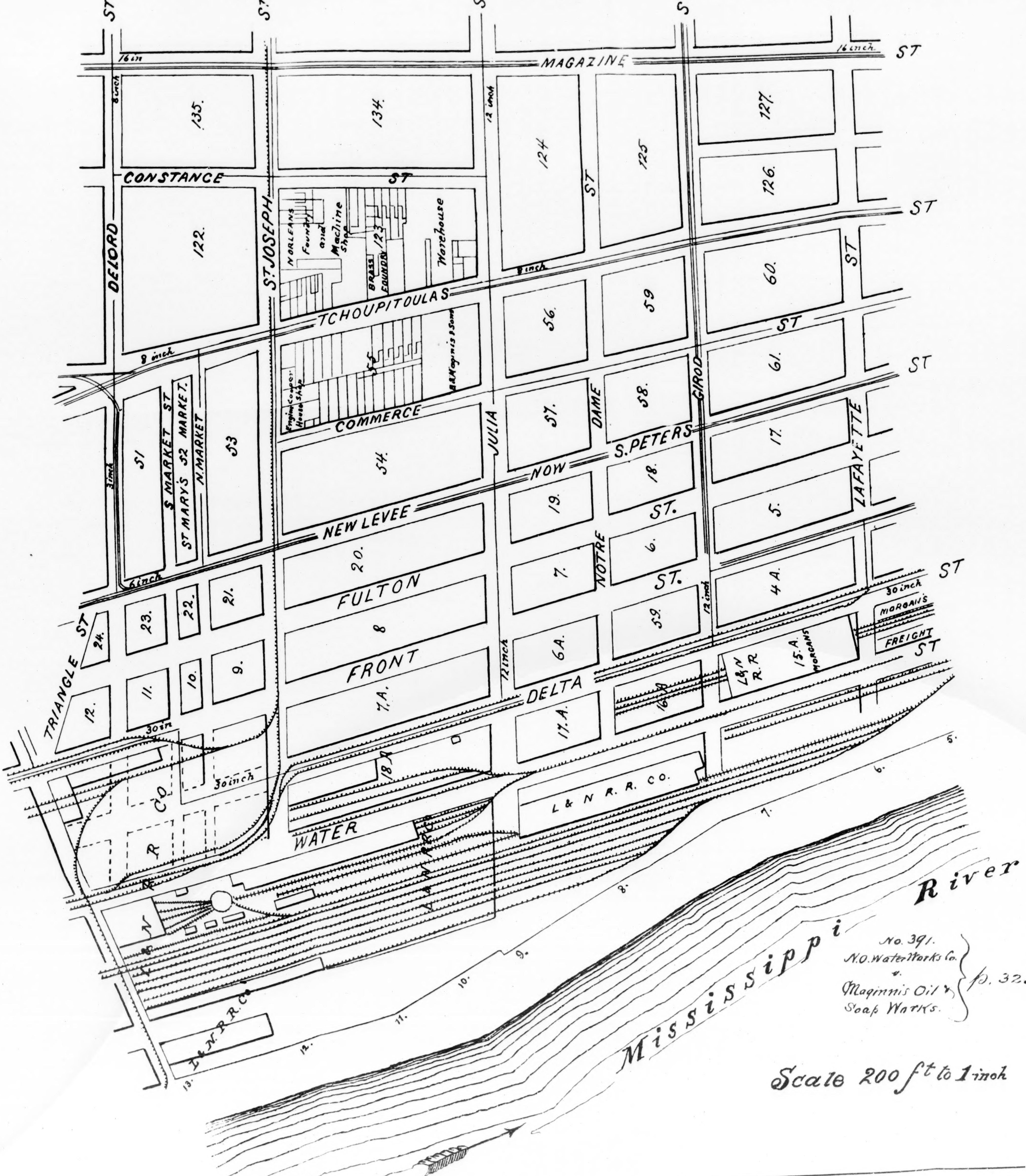
R.R.
Water Pipe
Street Cars

Office of City Surveyor

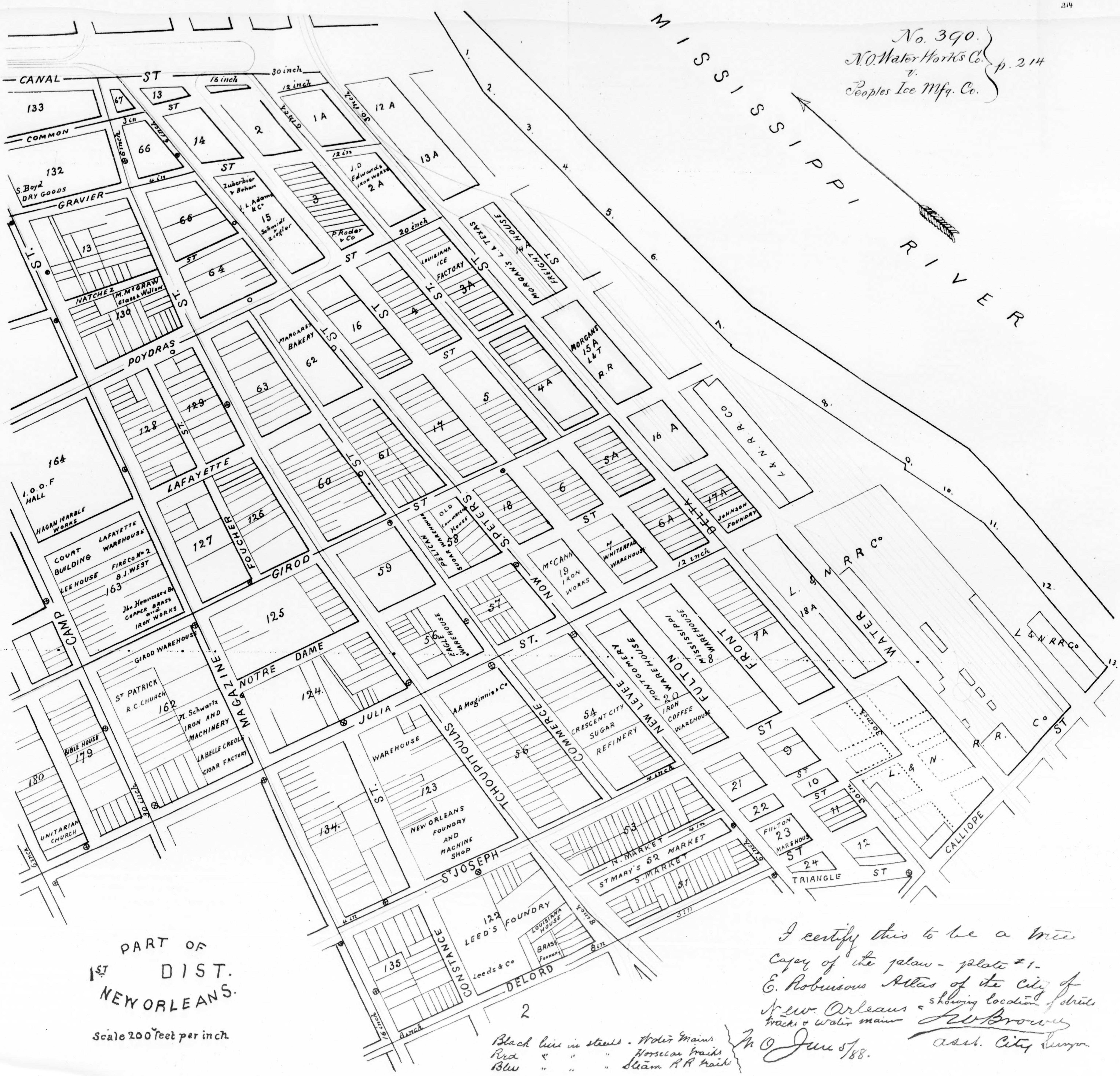
New Orleans January 24th
1888.

Certified a correct copy of plan in the E. Robinson atlas of the City of New Orleans.

D. C. M. Brosnan
City Surveyor.



No. 390.
N.O. Water Works Co.
v.
Peoples Ice Mfg. Co. } p. 214



PART OF
1st DIST.
NEW ORLEANS.

Scale 200 feet per inch

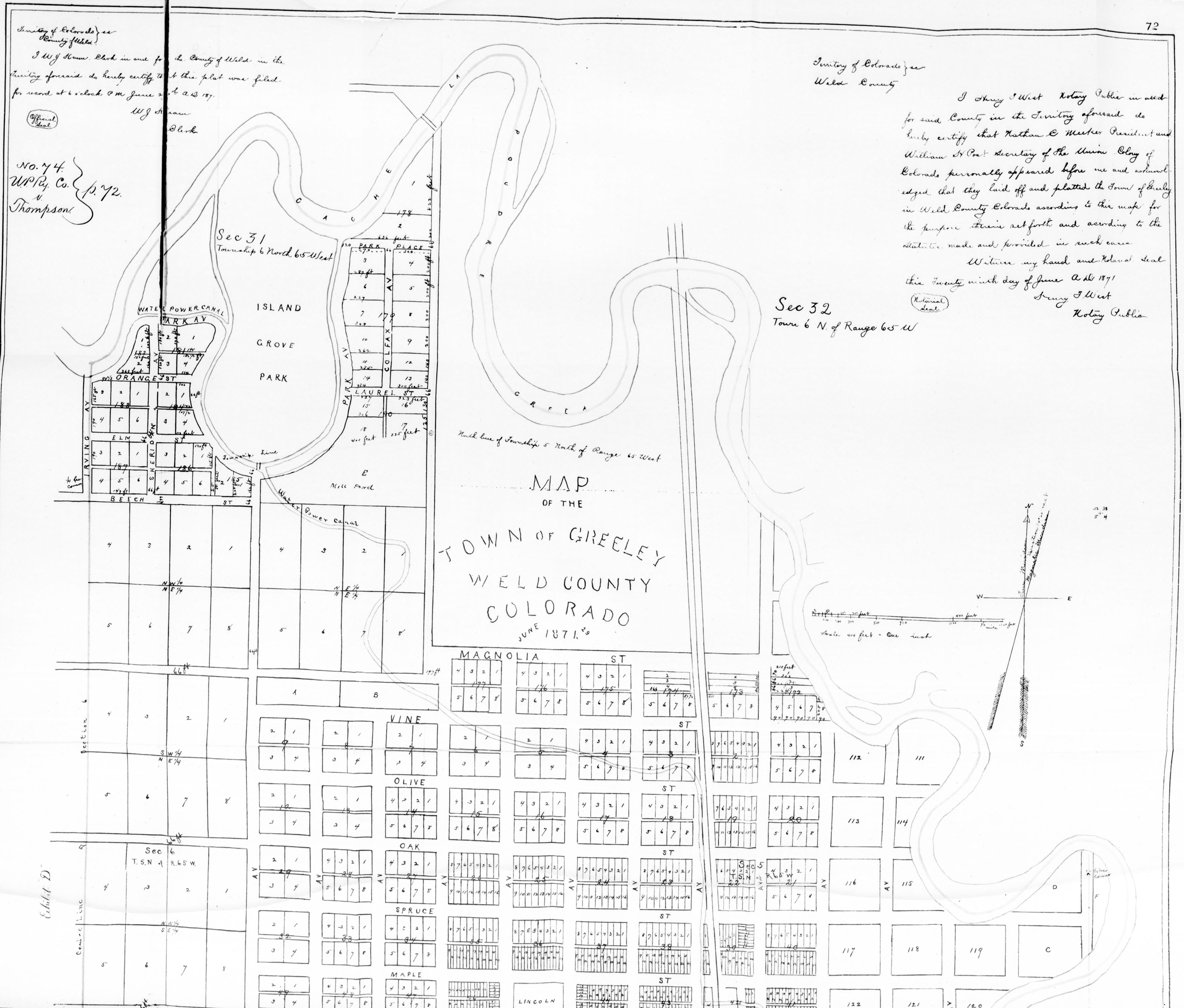
Black line in streets - Water Mains
Red " " " Horsecar tracks
Blue " " " Steam R R tracks

N O June 5/88.

I certify this to be a true copy of the plan - plate #1. E. Robinson's Atlas of the City of New Orleans showing location of street tracks & water main

L W Brown
Asst. City Surveyor

Exhibit "D"



MAP
OF THE
TOWN OF GREELEY
WELD COUNTY
COLORADO
JUNE 1871.29

Territory of Colorado } ss
County of Weld }

I W J Kram Clerk in and for the County of Weld in the Territory aforesaid do hereby certify that this plat was filed for record at 6 o'clock P M June 29th A D 1871

(Official Seal)

W J Kram
Clerk

No. 74.
U.P. Ry. Co.
v.
Thompson. } p. 72.

Territory of Colorado } ss
Weld County }

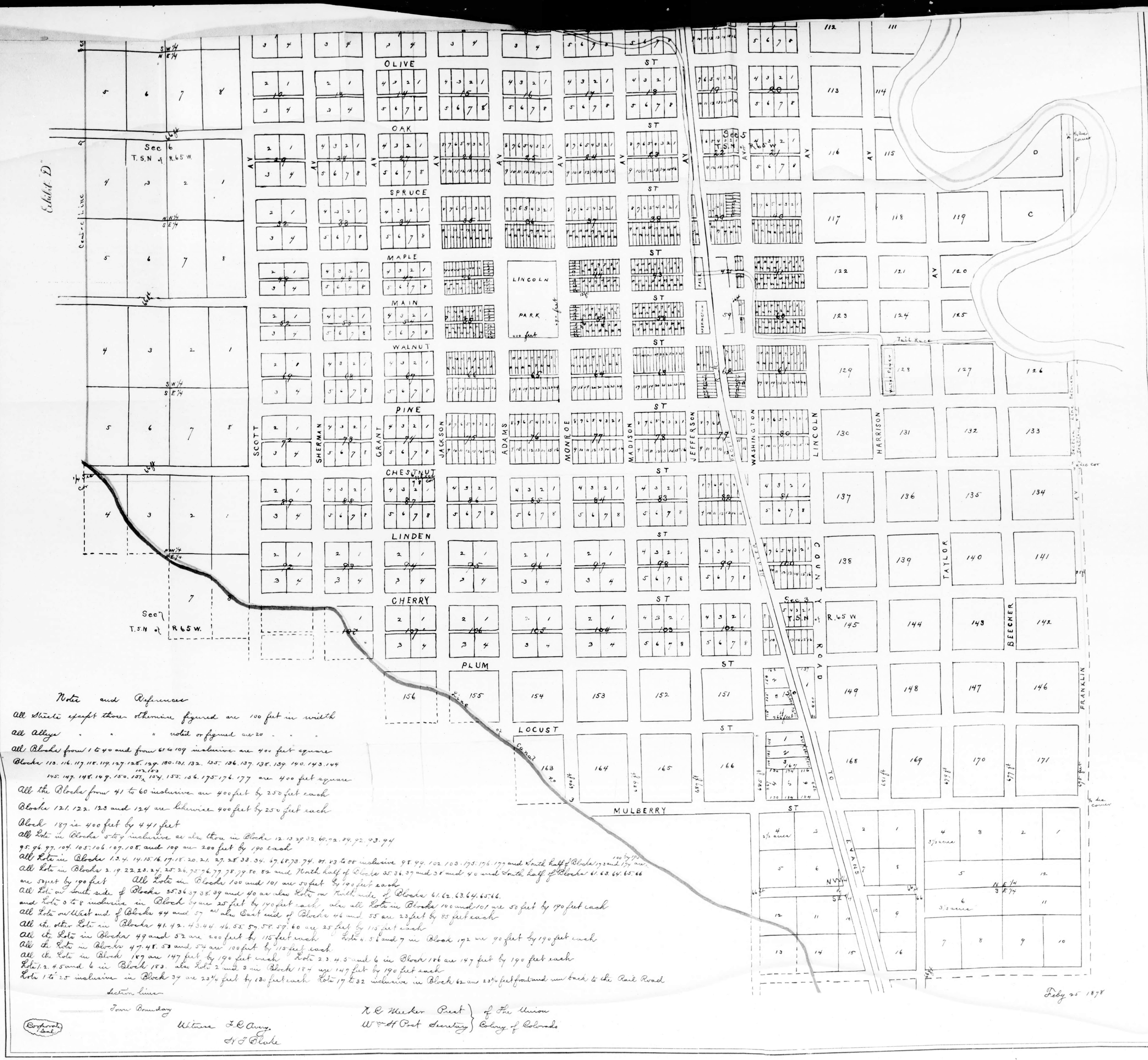
I Henry T West Notary Public in and for said County in the Territory aforesaid do hereby certify that Nathan C Meeker President and William H Post Secretary of the Union Colony of Colorado personally appeared before me and acknowledged that they laid off and platted the Town of Greeley in Weld County Colorado according to this map for the purpose therein set forth and according to the statutes made and provided in such cases

Witness my hand and Notarial Seal this Twenty ninth day of June A D 1871

(Notarial Seal)

Henry T West
Notary Public

Exhibit "D"



Notes and References

All Streets except those otherwise figured are 100 feet in width

All Alleys " " " noted or figured are 20 " " "

All Blocks from 1 to 40 and from 61 to 109 inclusive are 400 feet square

Blocks 113. 116. 117. 118. 119. 127. 128. 129. 130. 131. 132. 135. 136. 137. 138. 139. 140. 143. 144
145. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 175. 176. 177 are 400 feet square

All the Blocks from 41 to 60 inclusive are 400 feet by 250 feet each

Blocks 121. 122. 123 and 124 are likewise 400 feet by 250 feet each

Block 187 is 400 feet by 441 feet

All Lots in Blocks 5 to 9 inclusive as also those in Blocks 12. 13. 29. 32. 69. 72. 89. 92. 93. 94
95. 96. 97. 104. 105. 106. 107. 108. and 109 are 200 feet by 190 each

All Lots in Blocks 1. 3. 4. 14. 15. 16. 17. 18. 20. 21. 27. 28. 33. 34. 67. 68. 73. 74. 81. 83 to 88 inclusive 98. 99. 102. 103. 175. 176. 177 and South half of Blocks 173 and 174 are 100 by 190

All Lots in Blocks 2. 19. 22. 23. 24. 25. 26. 75. 76. 77. 78. 79. 80. 82 and North half of Blocks 35. 36. 37 and 38 and 40 and South half of Blocks 61. 63. 64. 65. 66
are 50 feet by 190 feet All Lots in Blocks 100 and 101 are 50 feet by 190 feet each

All Lots on South side of Blocks 35. 36. 37. 38. 39 and 40 as also Lots on North side of Blocks 61. 62. 63. 64. 65. 66.
and Lots 3 to 8 inclusive in Block 39 are 25 feet by 190 feet each also all Lots in Blocks 100 and 101 are 50 feet by 190 feet each

All Lots on West end of Blocks 44 and 57 as also East end of Blocks 46 and 55 are 23 feet by 85 feet each

All the other Lots in Blocks 41. 42. 43. 44. 46. 55. 57. 58. 59. 60 are 25 feet by 115 feet each

All the Lots in Blocks 49 and 52 are 200 feet by 115 feet each Lots 4. 5. 6 and 7 in Block 172 are 90 feet by 190 feet each

All the Lots in Blocks 47. 48. 53 and 54 are 100 feet by 115 feet each

All the Lots in Block 187 are 147 feet by 190 feet each Lots 2. 3. 4. 5 and 6 in Block 186 are 147 feet by 190 feet each

Lots 1. 2. 4. 5 and 6 in Block 183. also Lots 2 and 3 in Block 184 are 147 feet by 190 feet each

Lots 1 to 25 inclusive in Block 39 are 23 3/4 feet by 130 feet each Lots 17 to 32 inclusive in Block 62 are 23 3/4 feet front and run back to the Rail Road

Section line

Town Boundary

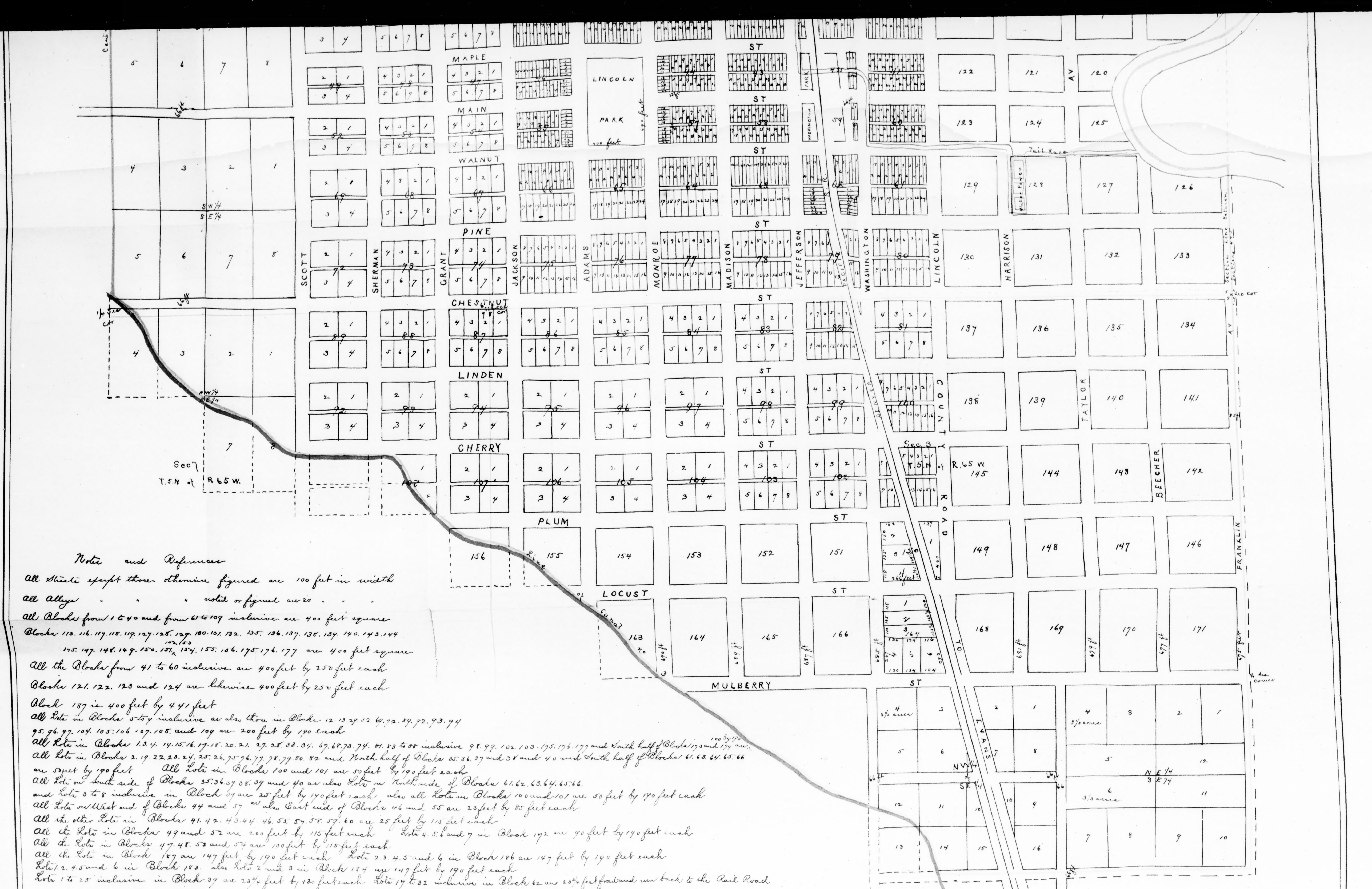
Corporate Seal

Witness F C Avery
N T Blake

N C Meeker Prest }
Wm H Post Secretary } of The Union Colony of Colorado

Feby 25 1878

State of Colorado }
County of Weld } I, James B Phillips, County Clerk and ex officio Recorder within and for said County in the State aforesaid
do hereby certify that



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Section lines

Town Boundary

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N T Blake

N C Meeker Prest } of The Union
Wm H Post Secretary } Colony of Colorado

State of Colorado }
County of Weld } I, James B Phillips, County Clerk and exofficio Recorder within and for said County in the State aforesaid do hereby certify that the above and foregoing is a true and correct tracing of one of the Town Plats of the Town of Greeley filed by the Union Colony of Colorado on the 29th day of June AD1871 in the County Clerk's office of said County, as the same appears now on file in my office

Seal Weld County

Given under my hand and official seal this 12th day of July AD1886. (Sgd.) James B Phillips County Clerk & Recorder